

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1106

E. S. EVANS, ET AL., PETITIONERS,

vs.

GUYTON G. ABNEY, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF GEORGIA

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HEARINGS HELD, AND ORDERS ENTERED:

1. Petition filed May 4, 1963.

Exhibits A & B—Last Will and Testament of
Augustus Octavius Bacon, dated March 28, 1911
and the codicil thereto, dated September 6, 1913.

2. Answer of defendant, City of Macon, filed May 20,
1963.

3. Answer of defendants, Guyton G. Abney, J. D.
Crump, T. I. Denmark and Dr. W. G. Lee, as suc-
cessor trustees, etc., filed May 27, 1963.

4. Motion for summary judgment filed May 27, 1963.

5. Motion of Rev. E. S. Evans et al. to intervene and
order thereon filed May 27, 1963.

6. Intervenors' petition filed June 18, 1963.

7. Amendment to plaintiff's petition and order allow-
ing, filed January 8, 1964.

8. Petition of A. O. B. Sparks, Willis B. Sparks, Jr.,
Virginia Lamar Sparks and M. Garten Sparks for
intervention and order allowing, filed January 8,
1964.

9. Amendment to answer and cross bill and order
allowing, filed January 8, 1964.

10. Amendment to answer of City of Macon and order
allowing, filed February 5, 1964.

Exhibit A—Resolution of the Mayor and Council
of the City of Macon adopted February 4, 1964.

**Exhibit B—Resignation of the City of Macon as
Trustee Under Will of Senator Augustus Octavius
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11. Amendment to intervenors' petition and order thereon, filed March 5, 1964.
12. Order and decree of March 10, 1964.
Resignation of the City of Macon as Trustee
Under Will of Senator Augustus Octavius Bacon.
13. Acceptance of Trust filed March 12, 1964.
14. Argument in Georgia Supreme Court, June 8, 1964.
15. Opinion of Georgia Supreme Court dated September 28, 1964.
16. Petition for certiorari filed March 5, 1965.
17. Certiorari granted April 26, 1965.
18. Opinion and judgment of Supreme Court of the United States of January 17, 1966.
19. Opinion of Georgia Supreme Court on remand dated March 14, 1966.
20. Motion for Summary Judgment, and Order filed November 10, 1966.
21. Response to Motion for Summary Judgment filed by Successor Trustees under Will of Augustus Octavius Bacon filed January 13, 1967.

22. Response to Motion for Summary Judgment filed by Successor Trustees under Will of Augustus Octavius Bacon, deceased filed January 16, 1967.
23. Response to Motion for Summary Judgment filed by Successor Trustees under Will of Augustus Octavius Bacon filed January 16, 1967.
24. Intervenor's Supplemental Response to Motion for Summary Judgment filed by Successor Trustees under Will of A. O. Bacon filed June 27, 1967.
25. Hearing on Motion for Summary Judgment, June 29, 1967.
26. Amendment to Motion for Summary Judgment and Order filed June 29, 1967.
27. Order making Attorney General a Party to case filed July 21, 1967.
28. Intervenor's Second Supplemental Response to Motion for Summary Judgment filed by Successor Trustees under the Will of A. O. Bacon filed August 10, 1967.
29. Intervenor's Third Supplemental Response to Motion for Summary Judgment filed by Successor Trustees under the Will of A. O. Bacon filed August 17, 1967.
30. Supplement to Motion for Summary Judgment as Amended filed August 21, 1967.
31. Second Supplement to Motion for Summary Judgment as amended filed August 28, 1967.

32. Intervenor's Fourth Supplemental Response to Motion for Summary Judgment filed by Successor Trustees under Will of A. O. Bacon, filed August 31, 1967.
33. Response by Attorney General to Motion for Summary Judgment filed November 1, 1967.
34. Order and Decree May 14, 1968, filed May 14, 1968.
35. Copy of Letter of Judge to Attorneys filed May 14, 1968.
36. Notice of Appeal filed June 10, 1968.
37. Enumeration of Errors filed July 8, 1968.
38. Decision of Georgia Supreme Court of December 5, 1968.
39. Judgment of December 5, 1968.
40. Order granting stay pending certiorari dated December 13, 1968.
41. Petition for Writ of Certiorari filed March 3, 1969.
42. Certiorari granted, May 5, 1969.

EXPLANATORY NOTE

Pages 1 to 94 *infra* are an exact reproduction of the printed record in this Court in Evans v. Newton, No. 61, Oct. Term 1965. These pages were reproduced in this manner by agreement of counsel. Folio page references in pages 1 to 94 are to the 1965 original record and differ slightly from pagination in the present record.

[fol. 1]

**IN THE
SUPREME COURT OF THE STATE OF GEORGIA**

Docket No. 22534

REV. E. S. EVANS, et al., Intervenor, Plaintiffs in error,

v.

CHARLES E. NEWTON, et al., Defendants in error.

BILL OF EXCEPTIONS—Filed May 8, 1964

To the Honorable Chief Justice and the Honorable Justices
of the Supreme Court of Georgia:

Be It Remembered that on February 5, 1964, there came on for hearing in Bibb Superior Court before the trial judge, the Honorable Oscar L. Long, a Motion for Summary Judgment which had been submitted by the petitioners, defendants-in-error, after which arguments and authorities were submitted to the Court by parties for each side. Thereafter, and on the 10th day of March, 1964 the said trial judge entered his order and decree granting the said motion.

To the said Order of the said trial judge the plaintiffs-in-error did except, now except and assign the ruling of the trial judge as reflected in his decree and order as being contrary to the law and facts in the case. Plaintiffs-in-error contend that said Order denies equal protection to the plaintiffs-in-error and others similarly situated as guaranteed by the Fourteenth Amendment to the United States Constitution, for the reason that said Order has the effect of prohibiting Negroes from the use of the park which is the subject matter of this litigation. Further, plaintiffs-in-error contend that said ruling, order and decree also denies to the plaintiffs-in-error, and others similarly situated, equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution,

in that, this said Court has accepted the resignation of the City of Macon as Trustees and appointed new Trustees for the purpose of enforcing the provisions of the Last Will and Testament of A. O. Bacon which contains a racially discriminatory testamentary provision and which plaintiffs-in-error contend was originally commanded by the State.

Error is further assigned to the said Order on the ground, and the plaintiffs-in-error contend, that Section 108-202, Georgia Code Annotated, 1933 Edition, has the effect of requiring that the racially discriminatory provisions of the testamentary trust which is a part of the subject matter of this litigation be declared null and void. Said Code Section reads as follows:

108-202. (4604) Cy pres.—When a valid charitable bequest is incapable for some reason of execution in the exact manner provided by the testator, donor, or founder, a court of equity will carry it into effect in such a way as will as nearly as possible effectuate his intention. (110 Ga. 540, 543 (35 S.E. 639).)

[fol. 2] Plaintiffs in error further assign error to the said trial judge's said ruling, order and decree on the ground that the Acts of Georgia of 1905, page 117, commonly referred to as Georgia Code Section 69-504, hereinafter set out, is violative of the equal protection clause of the Fourteenth Amendment for the reason that said provision prescribes racial discrimination and since the racially discriminatory provision in A. O. Bacon's Last Will and Testament, the plaintiffs-in-error contend, was dictated by that unconstitutional statute which received enforcement by said statute, all in violation of the Fourteenth Amendment to the United States Constitution, Sec. 1. Said Act reads as follows:

69-504 (890) Gifts for public parks or pleasure grounds.—Any person may, by appropriate conveyance, devise, give, or grant to any municipal corporation of this State, in fee simple or in trust, or to other persons as trustees, lands by said conveyance dedicated

in perpetuity to the public use as a park, pleasure ground, or for other public purpose, and in said conveyance, by appropriate limitations and conditions, provide that the use of said park, pleasure ground, or other property so conveyed to said municipality shall be limited to the white race only, or to white women and children only, or to the colored race only, or to colored women and children only, or to any other race, or to the women and children of any other race only, that may be designated by said deviser or grantor; and any person may also, by such conveyance, devise, give, or grant in perpetuity to such corporations or persons other property, real or personal, for the development, improvement, and maintenance of said property. (Acts 1905, p. 117.)

Plaintiffs-in-error specify as material to a clear understanding of the errors complained of the following portions of the record, to wit:

1. Petition, filed May 4, 1963.
2. Answer of the City of Macon, filed May 20, 1963.
3. Answer of Guyton G. Abney, J. D. Crump, T. I. Denmark and W. G. Lee, as Trustee successors under the Last Will and Testament of A. O. Bacon.
4. Motion for Summary Judgment dated May 27, 1963.
5. Motion of Rev. E. S. Evans, et al. to intervene, dated May 29, 1963, with order thereon.
6. Intervenor's Petition filed June 18, 1963.
7. Amendment to Petition filed January 8, 1964.
8. Petition for intervention and order thereon dated January 8, 1964.
9. Amendment to answer and Cross Bill, with order thereon, filed January 8, 1964.
10. Amendment to answer of City of Macon, filed February 5, 1964.

11. Amendment of Intervenor's Petition, filed March 5, 1964.
12. Trial Judge's Order and Decree dated March 10, 1964.
13. Resignation of City of Macon as Trustees.
14. Acceptance of Trust filed March 12, 1964.

[fol. 3] And Now, come Rev. E. S. Evans, et al., within the time provided by law, and assigning error on all the rulings complained of as being contrary to law, tender this their Bill of Exceptions and pray that the same may be certified to and transmitted to the Supreme Court of Georgia in order that the alleged errors may be considered and corrected, all as provided by law.

Donald L. Hollowell, William H. Alexander, Attorneys for Plaintiffs-in-error.

859½ Hunter St. N.W., Atlanta, Georgia 30314, Jackson 5-8372.

[fol. 4]

JUDGE'S CERTIFICATE TO BILL OF EXCEPTIONS
—April 14, 1965

I do certify that the foregoing Bill of Exceptions was tendered to me on the 9th day of April, 1964, that the same is true and specifies all the evidence, and specifies all of the record material to a clear understanding of the errors complained of and the Clerk of the Superior Court of Bibb County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this Bill of Exceptions specified, and of the record in said case as are in this Bill of Exceptions specified, and certify the same as such and cause the same to be transmitted to the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This 14 day of April, 1964.

O. L. Long, Judge, Bibb Superior Court.

[fol. 5] The within and foregoing Bill of Exceptions tendered this 9 day of April, 1964.

O. L. Long

[fol. 6] Acknowledgments of Service by Attorneys for Defendants-in-Error (omitted in printing).

[fol. 8] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 10] [File endorsement omitted]

[fol. 12]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

PETITION—FILED May 4, 1963

Charles E. Newton, Mrs. T. J. Stewart, Frank M. Wil-
lingham, Mrs. Francis K. Hall, George P. Rankin, Jr., Mrs.
Frederick W. Williams and Mrs. Kenneth W. Dunwody, all
of said State and County, in their respective capacities as
members of the Board of Managers of Baconsfield, herein-
after referred to as the "Board", bring this bill in equity
and name as defendants the following parties:

The City of Macon, in its capacity as Trustee under
Item 1X of the Last Will and Testament of Augustus
Octavius Bacon, deceased:

Guyton G. Abeny, J. D. Crump, T. I. Denmark and
Dr. W. G. Lee, as successor Trustees under the Last
Will and Testament of Augustus Octavius Bacon, De-
ceased, holding assets for the benefit of certain desig-
nated beneficiaries who will take the residuary estate
under the terms of said Will, but subject to the pro-
visions of Item 1X thereof as herein more fully set
forth.

1.

This Honorable Court has jurisdiction of this proceed-
ing in that all of the defendants against whom substantial
relief is prayed herein are residents of Bibb County,
[fol. 13] Georgia; and for the further reason that the trust
assets, as hereinafter described and which form the subject

matter of this bill in equity, are situate in said State and County.

2.

Your petitioners are the duly qualified and acting members of the Board of Managers of Baconsfield, created and established under the provisions of Item 1X of said Last Will and Testament of Augustus Ocavius Bacon.

3.

The defendant the City of Macon is a municipality duly created by Act of the Legislature of the State of Georgia, and, under said Item 1X of said Will, holds, as Trustee, the legal title to that tract or parcel of land situate in Macon, Bibb County, Georgia, known as "Baconsfield", and more fully described in said Will.

4.

The defendants Guyton G. Abney, J. D. Crump, T. I. Denmark, and Dr. W. G. Lee are successor Trustees under said Last Will and Testament, and codicil thereto, and are duly qualified and now acting in such capacities, respectively.

5.

The Last Will and Testament of Augustus Octavius Bacon, dated the 28th day of March, 1911, and the codicil thereto, dated the 6th day of September, 1913, have been duly probated in solemn form in the Court of Ordinary of [fol. 14] Bibb County, Georgia, a copy thereof being attached hereto as Exhibits "A" and "B" and by reference made a part hereof.

6.

Under Item 1X of said Will the testator conveyed all his right, title and interest in and to Baconsfield, the parcel referred to being fully described in said Item 1X, unto

"The Mayor and Council of the City of Macon", the then designation of the same municipal corporation which is now the "City of Macon".

7.

Your petitioners show that said property was so conveyed to the defendant the City of Macon "in trust for the sole, perpetual and unending use, benefit and enjoyment of the white women, white girls, white boys and white children of the City of Macon, to be by them forever used and enjoyed as a park and pleasure ground", subject however, to the restrictions, government, management, rules and control of the Board of Managers of Baconsfield, your petitioners herein.

8.

Although under the provisions of said Will, the defendant the City of Macon, as Trustee of said properties, is under a paramount duty to carry out the provisions of said trust, the Board has complete and unrestricted control and management of said property, with power to make all needful regulations for the preservation and improvement thereof, and rules for its use and enjoyment, with power to exclude at any time any person or persons of either sex, who may be deemed objectionable, or whose [fol. 15] conduct or character may by said Board be adjudged or considered objectionable, or such as to render for any reason in the judgment of said Board their presence in said grounds inconsistent with or prejudicial to the proper and most successful use and enjoyment of said property for the purposes contemplated by the testator.

9.

As directed in said Will, the Board has over the years confined the exclusive use of Baconsfield to those persons designated in said Will, although under the provisions thereof it has not objected to the use of said property by

the white men of the City of Macon and white persons of other communities.

10.

Your petitioners show, however, that although they have called the attention of the defendant the City of Macon to the provisions of Item 1X of said Will and its duties as Trustee thereunder, said defendant is now failing and refusing to carry out and enforce the provisions of said Will with respect to the exclusive use of Baconsfield by the white women of the City of Macon and white boys and white girls, and white men when so authorized by the Board, but on the contrary, has recently permitted and is now permitting the continuous use of said premises by members of the colored race, in direct contravention of the terms of the trust created by the testator, and under which said defendant holds title to Baconsfield, and in complete disregard and violation of the explicit mandate of the testator as set forth in said Will.

11.

Your petitioners are without power to enforce the terms of said trust with respect to the aforesaid use of Baconsfield, except to request the defendant the City of Macon to comply with the terms of the Trust. If, however, a new Trustee, or new Trustees, are appointed by this Court then, if necessary, said Trustee or Trustees, by the exercise of a writ of mandamus or otherwise could require the defendant the City of Macon or other proper law enforcement officers to carry out their duties so that the terms of the trust, which the City of Macon now is violating in its capacity as Trustee, may be carried out by the new Trustee or Trustees.

12.

Your petitioners show that the aforesaid breach of duty on the part of the defendant the City of Macon, as Trustee,

tee, constitutes such a violation of trust as to require its removal as Trustee.

13.

Your petitioners bring this petition for the purpose of removing the defendant the City of Macon as Trustee of said properties, and recommend to this Honorable Court, as a court of equity, that it appoint three (3) freeholders, residents of the City of Macon, to serve as successor Trustees to defendant the City of Macon and who in their capacity as Trustees, being private citizens, can and will under the law carry out the testator's wishes and intent with re-[fol. 17] spect to the use and enjoyment of Baconsfield, and the purposes for which said trust was established.

Wherefore, your petitioners pray:

- (a) That process do issue in terms of law;
- (b) That the defendant the City of Macon be removed as Trustee under said Will;
- (c) That this Court, as a court of equity, enter a decree appointing one or more freeholders, residents of the City of Macon, to serve as Trustee or Trustees under the Last Will and Testament of Augustus Octavius Bacon, deceased, with power on the part of the Board to name, subject to the approval of this Court, from time to time, a successor Trustee or Trustees upon the death or disqualification of any such Trustee, or should any such Trustee for any reason cease to serve in such capacity;
- (d) That legal title to Baconsfield, as well as to any other assets now held by the defendant the City of Macon, in its capacity as such Trustee, be decreed to be in the Trustee or Trustees so appointed by this Court, and in their respective successor or successors, for the uses, purposes and trusts originally declared by the testator, Augustus Octavius Bacon;

- (e) That your petitioners have such other and further relief as the Court may deem fit and proper.

Jones, Sparks, Benton & Cork, Attorneys for Petitioners.

[fol. 18] *Duly sworn to by Frank M. Willingham, jurat omitted in printing.*

[fol. 19]

EXHIBIT "A" TO PETITION

COPY OF LAST WILL AND TESTAMENT OF
AUGUSTUS OCTAVIUS BACON

I, Augustus Octavius Bacon, of said State and County, being in perfect health and of sound and disposing mind and memory, and desiring to make disposition, while so capacitated, of the property which, under Providence, has been the fruit solely of my personal industry and toil, do hereby make, publish and declare this my last Will and Testament, hereby expressly and entirely revoking and cancelling all other Wills heretofore made by me.

Item 1st

I commit my soul to God, in the humble hope that in spite of my many weaknesses, imperfections, faults and misdeeds, I shall be reunited in a happy immortality with my kindred and friends, and particularly with the members of my immediate family, to whose happiness and welfare my life has been gladly and unsparingly devoted.

Item 2nd

I direct that my body be buried in Rose Hill Cemetery in the lot recently purchased by me, and that the bodies of my two ever-lamented sons, Lamar Bacon, who died on the 21st day of December 1884 and Augustus Octavius Bacon, Jr., who died on the 27th day of November of the same year, shall be removed from the lot in which they are now

interred, and re-interred in the same lot now owned by me, and I further direct that my Trustees hereinafter named, or their successors, shall erect over the graves of myself and of my two sons, and also over the graves of all other [fol. 20] members of my family who shall die during the continuance of the trust herein created, monuments in their discretion suitable and appropriate therefor.

Item 3rd

I direct that all my just debts be paid as early as practicable after my death.

Item 4th

My household and kitchen furniture in the main dwelling house, I give and bequeath to my wife, Mrs. Virginia Lamar Bacon, during the full term of her natural life, to be thereafter disposed of by her will as she may direct.

Item 5th

My household furniture in the little cottage commonly called "The Hut" which I have personally occupied for years, as well as all of my books of every kind wherever located, together with all of my papers, pictures, jewelry, personal apparel and all other similar personal effects, I give to my two beloved daughters, Mrs. Mary Louise Bacon Sparks, and Mrs. Augusta Lamar Bacon Curry, to be divided between them as they shall agree with each other, requesting that they give or transmit to their several children such of said articles as it may be thought they would prize and preserve.

Item 6th

All of my estate both real and personal, of every description, and wherever situate, excepting therefrom only so much thereof as is otherwise disposed of by this Will, either in the clauses precedent or subsequent hereto, I [fol. 21] hereby give, bequeath and devise unto my tried

and trusted friends Alexander Lawton Miller, Custis Nottingham, Richard C. Jordan and Warren Roberts, all of my said bounty, in trust for the persons and purposes hereinafter named and specified, with the estates and remainders, and with the powers and limitations herein specifically designated and set forth as follows :

(a) Except as otherwise specified in this Will, all of the corpus of my said property—including both that held by me in trust, and that held in fee simple—whether consisting of the property as it exists at the time of my death, or of the property into which it may be subsequently converted, or of property subsequently acquired for my estate, shall be held by the said Trustees and their successors in trust for the sole use, benefit and enjoyment of my wife, Mrs. Virginia Lamar Bacon, and of my two daughters, Mrs. Mary Louise Bacon Sparks and Mrs. Augusta Lamar Bacon Curry, for and during the term of their natural lives, and after their several deaths, with the several remainders as herein specified and provided, and to the uses, benefit and enjoyment of the beneficiaries specified thereunder; and to fully effect the same, the said Trustees shall annually, so long as the said Mrs. Bacon, Mrs. Sparks and Mrs. Curry shall all remain in life, pay to each of them one-third of the net annual revenue derived from said property after the payment of all [fol. 22] proper and legitimate expenses incident thereto.

(b) Upon the death of Mrs. Virginia Lamar Bacon, I direct that all of the property specified and embraced within this Item 6th of my Will, including the one-third theretofore held in trust for Mrs. Virginia Lamar Bacon, shall be by the said Trustees divided into two equal parts, one of which parts shall be held by said Trustees in trust for the sole use, benefit and enjoyment of my daughter, Mrs. Mary Louise Bacon Sparks, during the full term of her natural life with the re-

mainders in the same as hereinafter specified, and the net revenues from the same shall during her life be annually paid to her; and the other of said equal parts shall be held by said Trustees in trust for the sole use, benefit and enjoyment of my daughter, Augusta Lamar Bacon Curry during the full term of her natural life, with the remainders in the same as hereinafter specified, and the net revenue from the same, shall during her life, be annually paid to her.

(c) Upon the death of my daughter Mary Louise Bacon Sparks, I direct that the portion of the property embraced in this Item 6th of my Will and held in trust for her during the term of her natural life as aforesaid shall thereafter be held by said Trustees and their successors of the sole use, benefit and enjoyment of the [fol. 23] children now in life of my said daughter, Mary Louise Bacon Sparks. During the full term of the life of Willis B. Sparks, Senior, who married my said daughter, Mary Louise, with remainder after his death to the children of the said children now in life of my said daughter Mary Louise, to-wit: the children of Augustus Octavius Bacon Sparks, Willis B. Sparks, Junior; Virginia Lamar Sparks and of Garton Sparks. But if at the time of the death of my daughter Mary Louise, and any one or more of the said children of my said daughter Mary Louise shall then be in life, the proportionate interest of each of said children of my daughter Mary Louise shall then vest in said child in fee simple, and thereupon the said trust to that extent shall cease and terminate. If during the life of the said Willis B. Sparks, Senior, and after the death of my daughter, Mary Louise, any one of her said children hereinbefore named, shall die leaving neither husband, nor wife, nor child, the interest of said child so dying shall thereupon descend to, and enure in equal parts to the benefit of the survivors of the said children, and shall thereafter during the continuance of this trust, be held by the said Trustees for the use,

benefit and enjoyment of the survivors of the said children. The intent and purpose of this provision of my Will is that in no event and under no circumstances shall the trust cease and the title in and to said prop- [fol. 24] erty, or any part thereof, vest in fee simple, in either of my said daughter Mary Louise, or in any of her descendants, during the term of the natural life of the said Willis B. Sparks, Senior; and further that the remainders hereinbefore specified shall be preserved and take effect after the death of the said Willis B. Sparks, Senior.

(d) Upon the death of my daughter, Augusta Lamar Bacon Curry, I direct that the portion of the property embraced in this Item, and held in trust for her during the term of her natural life as aforesaid, shall thereafter be held by said trustees and their successors, for the sole use, benefit and enjoyment of the children now in life of my said daughter, Augusta Lamar, to-wit: Shirley Holcomb Curry, Marie Louise Curry and Manly Lamar Curry, until her youngest child, the said Manly Lamar Bacon Curry, shall reach the age of twenty-one years, when the proportionate part of said property, shall vest in each of said children, and the trust, to the extent thereof in said property, shall thereupon cease and determine. But if either of the said named children or my said daughter, Augusta Lamar, shall, without leaving husband, or wife or child, die before the said Manly Lamar Bacon Curry shall reach, or would, if in life, reach the age of twenty-one years, the portion of the said child so dying shall thereafter be held in trust for the use, benefit and enjoyment of the survivors of the said named children; [fol. 25] and if either of the said named children of my said daughter, Augusta Lamar, shall, before the said Manly Lamar reaches, or would, if in life, reach the age of twenty-one years, die leaving a child or children in life, the portion of the child so dying shall be

held in trust for his or her surviving child or children until they severally arrive at the age of twenty-one years.

Item 7th

To my said Trustees hereinbefore named, and to their successors, I give full power and authority to sell so much of the property of my estate as is embraced in the foregoing Sixth Item of this Will, both real and personal or any part thereof in their discretion, and to make conveyances thereof, with full and perfect title free from said trusts, limitations and remainders, to the purchasers of the same without any authority asked from or granted by any court, or officer or any person whomsoever; said sales to be at either public or private sale, and no such terms as they in their discretion shall determine, and either with or without public or other advertisement of the same. But the net proceeds of all such sales, except as otherwise provided in this Will, shall be by the said Trustees reinvested in other real estate in the State of Georgia; which said real estate, when thus purchased for reinvestment, shall in each and every particular be held in the name of said Trustees or their successors subject to the same trusts and uses, and limited to the same estates and remainders as are specified in the foregoing Sixth Item of this Will; and the [fol. 26] title deeds taken to said real estate shall, by reference to this Will express that the same is conveyed for said trusts and uses, and with the said estates and remainders as are herein specified. The books of said Trustees shall contain an accurate and complete statement of all real estate and other property sold and purchased on account of said trust estate, and also accurate accounts of all monies received and disbursed on account of said estate. I urge the said Trustees in this connection not to sell the real property of my estate hurriedly, but only when the same can be done to the best advantage, as the said property can in large part be used in such manner as to provide revenue, and the said property will in a reasonable short

time be very valuable for sale for residence purposes. The power to sell I intend to embrace in all its features and requirements and exemptions, the power to lease or rent.

Item 8th

During the lives of Mrs. Virginia L. Bacon and of my two daughters, Mary Louise Bacon Sparks and Augusta Lamar Bacon Curry, it is my will that they shall each receive annually through said Trustees, from my estate at least the full sum of \$1,200.00. If the one third of the net annual revenues derived from my estate does not in any year furnish an amount sufficient to pay the full sum of \$1,200.00 to each of them, I direct that the deficiency be made up by taking from the amount received from the sales of property embraced in Item Sixth of this Will, as much as will be necessary to give to each of the three, the said full sum of \$1,200.00.

[fol. 27] Upon the death of their mother, Mrs. Virginia Lamar Bacon, it is my will that each of my said daughters Mary Louise and Augusta Lamar, shall receive annually, through said Trustees, from my estate at least the sum of \$1,800.00. If the property set apart for the use and enjoyment of each of my said daughters upon the death of their mother, to be held as hereinbefore provided in trust for each of them during life, shall not in any year furnish an amount of net revenue sufficient to pay to each or either of them the full sum of \$1,800.00, I direct that the deficiency be made up by sales of property so set apart; so that any deficiency in the annual amount due to my daughter Mary Louise shall be made up by sales of property set apart for her use; and in like manner any deficiency in the annual amount due to my daughter Augusta Lamar shall be made up by sales of property set apart for her use; and the property so sold shall, as hereinbefore provided, be thereby freed from said trusts and the estates, limitations and remainders thereunder. The purpose of this provision is not to limit my wife and daughters to the amount named, but to ensure to them at least said amounts in case the net revenues shall be insufficient for that purpose.

Item 9th

I direct that there by said Trustees laid off and accurately defined and permanently marked by enduring monuments, the following described part of my farm which is situated in part within and part without the corporate limits of the City of Macon, and known as "Baconfield," the same to be set apart and dedicated to the purposes, uses and enjoy- [fol. 28] ment as hereinafter more fully set forth and detailed. The said part of the property thus set apart is bounded as follows: there is on the Southeastern part of my said farm a four acre rectangular tract which formerly belonged to James Pepper, and which is commonly known as the "Pepper Place" the same having been purchased and added to my farm. For this description, beginning at the South-eastern corner of said rectangular tract, the boundary line of the property runs in a Northerly direction along the Eastern boundary line of said Pepper Place and thereafter in a direct prolongation of the same to a point nine hundred and sixty-three feet and five-tenths from the said starting point, thence in a slightly northwestern direction sixty-three feet and five-tenths, thence in a northerly direction three hundred and thirty-two feet across Boulevard Baconfield to a point on the Western side of said Boulevard, thence three hundred and sixteen feet along the western border of said Boulevard to a point on the same immediately opposite the junction of said Boulevard and Gray Street, thence, in a direction a little West of North, twenty-four hundred and eighty feet to an elm tree, thence at right angles sixteen hundred and sixty-two feet to the bank of the Ocmulgee River, thence in a Southeasterly direction along the bank of said river thirty-three hundred and ninety seven feet, thence in a direct line to the Southwest corner of the said Pepper lot, thence four hundred and thirty-seven feet along the Southern boundary line of said Pepper lot to the original starting point; the said metes and bounds of the said tract of land being correctly platted and defined on a map of the same hereto attached, made [fol. 29] by H. D. Cutter and upon which for the purpose of

identification, I have endorsed my original signature. The larger part of the property thus described and bounded is a portion of a trust estate originating with me and created solely by me for the benefit of my wife and children during my life and for their benefit and use after my death in such estates and with such remainders as should be specified and directed by me in my last Will and Testament. For the purpose of carrying out fully the purpose and intent of the trust thus created, I hereby give, bequeath and devise the said property consisting of the tract of land hereinbefore described and bounded and platted on said map unto the said Trustees, viz. Alexander Lawton Miller, Custis Nottingham, Richard C. Jordan and Warren Roberts, in trust for the sole joint use, benefit and enjoyment of my wife, Virginia Lamar Bacon, and of my two daughters, Mary Louise Bacon Sparks and Augusta Lamar Bacon Curry, during the term of their natural lives, as follows: So long as they shall all live they shall be entitled to the equal enjoyment and use of the same including all revenues and profits in any way derived therefrom. When Mrs. Virginia Lamar Bacon shall die, the use, benefit and enjoyment of the entire property herein described and bounded shall belong to my two said daughters equally, including all revenues and profits in any way derived from the same, during the full term of their natural lives. Upon the death of either of my said daughters, her interest in said property shall be enjoyed by her children and the survivors of them until the death of my last surviving daughter. Upon the death of my said wife and of each of my said daughters, [fol. 30] and of the last survivors of them, the trust created in this property by this said Ninth Item of this Will in the said tract of land thus defened, bounded and platted shall cease, and thereafter shall close all interest and right of enjoyment of any person or persons whomsoever in said property except as hereinafter specified and provided, to-wit: When my wife, Virginia Lamar Bacon and my two daughters, Mary Louise Bacon Sparks and Augusta Lamar Bacon Curry, shall all have departed this life, and immedi-

ately upon the death of the last survivor of them, it is my will that all right, title and interest in and to said property hereinbefore described and bounded, both legal and equitable, including all remainders and reversions and every estate in the same of whatsoever kind, shall thereupon vest in and belong to the Mayor and Council of the City of Macon, and to their successors forever, in trust for the sole, perpetual and unending, use, benefit and enjoyment of the white women, white girls, white boys and white children of the City of Macon to be by them forever used and enjoyed as a park and pleasure ground, subject to the restrictions, government, management, rules and control of the Board of Managers hereinafter provided for: the said property under no circumstances, or by any authority whatsoever, to be sold or alienated or disposed of, or at any time for any reason devoted to any other purpose or use excepting so far as herein specifically authorized. For the control, management, preservation and improvement of said property there shall be a Board of Managers consisting of seven persons of whom not less than four shall be white women, and all seven of whom shall be white persons. [fol. 31] The Members of this Board shall first be selected and appointed by the Mayor and Council of the City of Macon, or by their successors in said trust; and all vacancies in said Board shall be filled by appointments made by the Mayor and Council of the City of Macon, or their successors, upon nomination made by the said Board of Managers and approved by the said Mayor and Council of the City of Macon or their successors. If practicable, I desire that there shall be as a member of said Board of Managers at least one male or female descendant of my own blood, not only in the Board as first constituted, but at all times thereafter. The said Board of Managers shall at all times have complete and unrestricted control and management of the said property with power to make all needful regulations for the preservation and improvement of the same, and rules for the use and enjoyment thereof, with power to exclude at any time any person or persons of either sex,

who may be deemed objectionable, or whose conduct or character may by said Board be adjudged or considered objectionable, or such as to render for any reason in the judgment of said Board their presence in said grounds inconsistent with or prejudicial to the proper and most successful use and enjoyment of the same for the purposes herein contemplated. The Board of Managers shall have the power to admit to the use of the property the white men of the City of Macon, and white persons of other communities, with the right reserved to at any time withhold or withdraw such privilege in their discretion. To enable the Board of Managers to have a fund for the payment of necessary expenses connected with the management, improvement and preservation of said property, including when possible drives and walks, casinos and parlors for [fol. 32] women, play grounds for girls and boys and pleasure devices and conveniences and grounds for children, flower yards and other ornamental arrangements, I direct that said Board may use for purposes of income in any manner they may deem best that portion of the property that lies Easterly of the road known as Boulevard Baconsfield, beginning at the north Macon bridge and including the "Pepper Place," also all of said property lying on the river which is properly classed as low lands, or river bottom; but in no event and under no circumstances shall any part of the property herein conveyed and bounded and platted be ever sold or otherwise alienated or practically disposed of by any person or authority whatsoever, and excepting the portions of the property which may be used for purposes of revenue as aforesaid all the remainder of said property shall forever and in perpetuity be held for the sole uses, benefits and enjoyments as herein directed and specified. If it should be held that said property is subject to taxation when devoted to such uses as a park or pleasure ground, I request that proper steps be taken to secure from the State of Georgia a perpetual release from all liability to taxation.

I take occasion to say that in limiting the use and enjoyment of this property perpetually to white people, I am not influenced by any unkindness of feeling or want of consideration for the Negroes, or colored people. On the contrary I have for them the kindest feeling, and for many of them esteem and regard, while for some of them I have sincere personal affection.

I am, however, without hesitation in the opinion that in their social relations the two races (white and negro) [fol. 33] should be forever separate and that they should not have pleasure or recreation grounds to be used or enjoyed, together and in common. I am moved to make this bequest of said property for the use, benefit and enjoyment of the white persons herein specified, by my gratitude to and love of the people of the City of Macon from whom through a long life time I have received so much of personal kindness and so much of public honor; and especially as a memorial to my ever lamented and only sons, Lamar Bacon who died on the 21st day of December 1884 and Augustus Octavius Bacon, Jr. who died on the 27th day of the same year. And I conjure all of my descendants to the remotest generation as they shall honor my memory and respect my wishes to see to it that this property is cared for, protected and preserved forever for the uses and purposes herein indicated. I direct that said property during the lives of my said wife and my two said daughters shall continue to be known and designated as "Baconsfield" and that after their death, it shall be forever and perpetually known as "Baconsfield," and shall be so designated in all matters, documents and papers relating thereto.

While I make no restrictions, I request that the Managers will preserve on the property my present house residence, and the smaller house nearby which I have personally occupied for so many years and which I have called "The Hut" the said houses to be used to the best advantage, and in such localities on the property as may be most desirable, for the comfort, convenience and pleasure of the white women, girls, boys and children herein designated: and I trust that the managers of said property may find it to the best inter-

[fol. 34] est of those who are to enjoy this property that there shall be perpetually preserved the present woods and trees upon the same. And I specifically direct that during the said trust estate in said property for the uses and benefit of my wife Virginia Lamar Bacon and of my two daughters Mary Louise Bacon Sparks, and Augusta Lamar Bacon Curry, neither the said residence house nor the said smaller house known as "The Hut" shall be removed or destroyed or materially altered by addition or otherwise, but that the same during the entire terms of said trust estate for life, be carefully preserved in their present condition; and further that during the terms of said trust estates and during the lives of my said wife and my two said daughters, the woods and trees on said property be carefully preserved, and that no one of them be cut down or destroyed for any purpose whatsoever; and I further specifically provide and direct that the said trustees hereinbefore named and their successors shall not have power or authority to sell or otherwise alienate or dispose of the tract of land thus described, bounded and platted or any part thereof during the continuance of said trust or trusts or at any other time, under any circumstances and upon any account whatsoever, and all such power to make such sale or alienation is hereby expressly denied to them, and to all others.

Item 10th

To make still further provision for the preservation, management and improvement of the property set apart in the foregoing 9th Item of this Will as a park and pleasure grounds as aforesaid, I will and bequeath to the Mayor and Council of the City of Macon, and to their successors, ten [fol. 35] bonds of the Macon Railway and Light Co., each of said ten bonds being for \$1000.00 and in the aggregate being for \$10,000.00 and bearing interest at the rate of five per cent per annum, and at present in the custody of The Riggs National Bank in Washington, D. C., the said bonds and all monies or things of value resulting and derived therefrom to be held by the said Mayor and Council

of the City of Macon and their successors for the following trusts and uses, to-wit: So long as the property known and to be known perpetually as "Baconsfield," specified, bounded and described in the foregoing 9th Item of this Will, shall continue to be held in trust by the Trustees named in the said foregoing 9th Item and their successors for the use and benefit of my said wife and my two said daughters, or either of them, until the said property shall vest in the Mayor and Council of the City of Macon to be held in trust for the purposes specified and for the uses directed in the said 9th Item. The said Mayor and Council of the City of Macon shall as said Trustees collect the semi-annual interest which shall be paid on said bonds, and as promptly as practicable invest the same in interest bearing bonds to be added to and included in said trust fund; and the interest received on the additional bonds thus purchased, and from all other bonds additional thereto resulting from and accruing to said fund, shall in like manner be reinvesting in interest bearing bonds, so that all income from said fund or in any manner accruing to said fund shall as far as practicable be semiannually compounded and added to the principal of the original fund. When the said Trustees named in the said 9th Item and their successors shall cease [fol. 36] to hold said property in trust for my said wife and my said daughters, as provided in the said 9th Item, and when as therein provided the Mayor and Council of the City of Macon shall as Trustees be vested with said property and the title to the same for the uses therein set forth, they shall as may be required for the preservation, maintenance and improvement of said park and pleasure ground, pay over to the Board of Managers hereinbefore provided for, the income subsequently received from said trust fund constituted of and resulting from the said bonds; and all income derived from said property, and from said bonds, and the proceeds thereof, when not required for the needs of said park and pleasure ground, be added to the said principal fund, to the end that from increased income it may be in greater and ever increasong degree beautiful and developed and equipped for the benefit and enjoyment of those for

whose pleasure and happiness it is designated. If for any reason it should be held that the Mayor and Council of the City of Macon have not the legal power under the charter of the City to hold said fund in trust for the purposes specified, then unless said power is obtained through appropriate legislation, I direct that the powers herein expressed be conferred upon a trustee to be selected by the Mayor and Council of the City of Macon, with such safeguards and restrictions as may be prescribed by them for the perpetual safekeeping and management of the fund. And I give a similar direction if for any reason it should be held that the Mayor and Council of the City of Macon have not the legal power under their charter to hold in trust for the purposes specified the property designated for said [fol. 37] park and pleasure ground, unless said required power is conferred by appropriate legislation. Should the Mayor and Council of the City of Macon at any time consent to do so, then I direct that they be authorized to receive the fund constituted of said bonds and all additions thereto and the proceeds thereof, and cover the same into the treasury of the City, in consideration of the perpetual obligation of the City to be evidenced by its bond or otherwise, to provide and pay over annually to the said Board of Managers an amount equal to five per centum interest upon the sum thus covered into the treasury, to be devoted by said Board to the uses hereinbefore specified. In making this bequest as expressed in this and the preceding item of my Will, I have been mindful to preserve the full use and enjoyment of the real estate to my wife and daughters during their natural lives, and also of the fact that the entire bequest in value represents a very much smaller proportion of my estate than would have been the share in it of my two sons had they lived. As there will be no one of my descendants who now bears my name either by right or birth, or through voluntary choice, an additional reason is furnished why I should deem it proper that in devoting this property to the uses specified, I should at the same time link their memories with the pleasures and enjoyments of the women and children and girls and boys

of their own race in the community of which they once formed a happy part.

Item 11th

For many years I have had someone employed to care for the cemetery lot at Midway Church in Liberty County in [fol. 38] which my father, Rev. Augustus Octavius Bacon and my mother Mary Louise Bacon and my only brother, Samuel Jones Bacon, are buried, and also my uncle, Dr. Albert Summer Bacon, the small sum of \$10.00 per year having been found sufficient for that purpose. I direct that the payment of said amount, or more if required, be made annually for said purpose, by the said trustees of my estate, and that the same be made a perpetual charge upon the property of my estate when distributed to my devisees and legatees; and I conjure my descendants to the remotest generation to so provide that the said cemetery lot shall always be properly preserved and cared for. I make a like bequest and request for the proper care of the burial lot of my wife's family in Rose Hill Cemetery in Macon, and for the proper care of my own cemetery lot in Macon.

Item 12th

The provision herein made for my wife, Mrs. Virginia Lamar Bacon, is in all its parts, both as to realty and personalty through said Trustees, intended to be in lieu of dower and first year's support. If she should refuse to accept the same and elect to take her dower, then it is my will that the remainder interest in the real estate set apart as her dower shall vest in my said Trustees for the trusts and estates and uses as hereinbefore provided should obtain following her death.

Item 13th

I direct that said Trustees shall be authorized to use a portion of the money realized from the sale of lots for residences or other purposes, in the improvement of other [fol. 39] portions of the property with the view of secur-

ing increased revenue therefrom for the enjoyment of my wife and daughters and their children; but I desire that this power shall be sparingly exercised and only in case where the prospects of such increased revenue is reasonable certain.

Item 14th

In case of the occurrence of a vacancy among the said Trustees herein named and appointed in the Sixth Item of this Will, I direct that it be filled by a suitable person selected by the remaining Trustees, such selection and the acceptance of the same to be evidenced in writing, and to be recorded upon the Minutes of the Superior Court of Bibb County upon petition by said remaining Trustees, and order of the Court granting authority to do so.

The said Trustees and their successors shall not be required to give any bond for the proper and faithful performance of their duties under said trust, or for any other purpose whatsoever, nor shall they be required to make any returns of property or of money received and disbursed, or of any other actings and doings under said trust to any court or other authority, but shall only be required to keep accurate books of accounts of property and of receipts and disbursements which shall be open to the inspection of the beneficiaries under this Will. They shall also make to the Mayor and Council of the City of Macon annual reports, relative to the conditions and preservation of the property herein designated as "Baconsfield" and embraced within the provisions of the Ninth Item of this Will, and particularly as to the preservation of the buildings and trees [fol. 40] upon the same. I have confidence that my said Trustees will execute this trust as economically as practicable, and I recognize and desire that such one of this number as may be charged more immediately with the work shall, through commissions or sales or otherwise, receive a fair compensation for his time and labor expended thereon.

Item 15th

I am firmly convinced both from observation and personal experience that it is unwise for personal relatives to have business transactions and business relations with each other, and I specifically direct that, except as provided in the ninth Item of this Will in the case of the said Board of Managers, no blood relation of myself, and more particularly no one related to me by marriage, and most particularly no present or any future husband of said daughters or of either of my granddaughters, either during the lives of my said daughters or granddaughters, or at any time thereafter, shall ever be either actually, nominally or practically or practically an executor, administrator or trustee for the management or control of my estate, or of any part of the property thereof, or hold any position, authority or employment as a manager, representative, or agent in the control or management of the property or any part thereof; or of any business or interest connected with the same or related thereto.

Item 16th

I hereby nominate, constitute and appoint my said long tried friends, Alexander Lawton Miller, Custis Nottingham, Richard C. Jordan and Warren Roberts, all of said State and County, Executors of this my Last Will and Testament. [fol. 41] They shall not be required to make any inventory or appraisement of the property of my estate, nor to have the same made by others, excepting only such as shall be made voluntarily by them to be entered on their private records for the information of themselves and of the beneficiaries under this Will. Nor shall the said Executors be required any bond, or to make any return of or concerning the property of my said estate, or the disposition or management of the same or of its revenues, or any other returns of any kind whatsoever to any court, officer or authority whatsoever.

In witness whereof I, the said Augustus Octavius Bacon, at Macon Georgia on this the twenty eighth day of March

in the year Nineteen hundred and eleven, to the foregoing thirty two pages written with my own hand, and containing my last Will and Testament, do hereby set my hand and affix my seal in the presence of the attesting witnesses, hereunto subscribing as such by my request.

/s/ AUGUSTUS OCTAVIUS BACON (Seal)

Signed, Sealed, Declared and Published by Augustus Octavius Bacon as his last Will and Testament in the presence of the undersigned who, each of us, at his request, subscribed our names as witnesses thereto in the presence of said Testator and in the presence of each other—this the twenty eighth day of March, in the year Nineteen hundred and eleven; the words “including both that held by me in trust, and that held in fee simple,” when they occur on the fourth page, and the word “authority,” when it occurs on the tenth page, having been in each instance interlined before signing.

[fol. 42]

/s/ J. M. HANCOCK

/s/ SIDNEY W. HATCHER

/s/ WALTER DEFORE

[fol. 43]

EXHIBIT “B” TO PETITION

CODICIL

City of Washington
District of Columbia

I, Augustus Octavius Bacon, of the State of Georgia and County of Bibb and now temporarily sojourning at Washington in the District of Columbia, being of sound and disposing mind and Memory, do hereby make, declare and publish this first codicil to my last Will and Testament heretofore made, published, and declared by me on the 28th day of March 1911.

Item 1st

I revoke so much of the second item of my said Will as directs that my body shall be interred in the cemetery lot recently purchased by me, and also that part in said item which directs that the bodies of my two deceased sons shall be disinterred and reinterred in said lot.

Item 2nd

I revoke so much of my said Will as nominates and appoints Warren Roberts as a trustee under the same, and also so much thereof as nominates and appoints the said Warren Roberts as Executor of my said Will, and in his stead I hereby nominate and appoint my tried and trusted friend Minter Wimberly of said County of Bibb, both as Trustee under my said Will and as executor thereof; hereby expressly conferring upon the said Minter Wimberly, both as said trustee and as said executor, all the powers, privileges, [fol. 44] leges, rights, immunities and exemptions heretofore conferred in said Will upon the said Warren Roberts, both as Trustee and as Executor as aforesaid.

Item 3rd

My beloved daughter, Augusta Lamar Bacon Curry, having died, it is my Will and I hereby direct that her children, Shirley Holcomb Curry, Marie Louise Lamar Curry and Manly Lamar Bacon Curry, shall in the disposition of my property, stand in the place of their Mother, and that the interest in my estate which she would have taken under my said Will shall, upon my death, enure to them and be held in trust for them and each of them in the same manner and to the same extent and subject to the same trusts, limitations, conditions and remainders as they would have taken under the provisions of my said Will had my daughter Augusta survived me and had they upon her subsequent death taken the same remainder interests prescribed for them in my said Will, and my said trustees shall hold said interests for them with the same trusts, limitations and conditions as are prescribed for them in

my said Will; but subject nevertheless to the following additional provisions, limitations and remainders, to-wit: The interest as aforesaid of each of said children shall enure to and be enjoyed by each for and during the period of his or her natural life respectively; and if either of said children of my daughter Augusta shall die leaving no child or children in life, the interest of said child so dying shall [fol. 45] enure to and be enjoyed by the surviving child or children of my daughter Augusta in the estates and with the same remainders as are herein prescribed for the original interest so received by each of them respectively. In making provisions for the children of my daughter Augusta I am not unmindful of the fact that part of the property thus generally devised is held by me in trust for my wife and children; but as the property thus held by me in trust is less than one-half of the aggregate of the property held by me both in trust and in my own right, the division herein directed thus generally, can be made without violation the terms of said trust. To prevent possibility of misconstruction I hereby prescribe and declare that all interest of the said children of my said daughter Augusta in the property specified in Item 9 of my said Will and in the rents, issues and profits thereof, shall cease, end and determine upon the death of my wife Virginia Lamar Bacon and of my daughter Mary Louise Bacon Sparks.

Item 4th

I direct that the said Custis Nottingham shall with his family continue to occupy free of rent the house now occupied by him at Baconsfield until the full expiration and execution of the trusts for the preservation and execution of which I have in my said Will and in this Codicil appointed the said Alexander Lawton Miller, Custis Nottingham, R. C. Jordan and Minter Wimberly as Trustees as aforesaid; this provision being made in consideration of the personal interest in and care for said trust property and said cestui que trusts by said Nottingham.

[fol. 46]

Item 5th

Except as herein modified and changed by this first Codicil, I do again hereby make, declare and publish my said last Will and Testament heretofore made, declared and published by me on the 28th day of March, 1911.

In witness whereof I, the said Augustus Octavius Bacon, at Washington in the District of Columbia on this the sixth day of September (1913) Nineteen hundred and thirteen to the foregoing four and one half pages written with my own hand and containing this first Codicil to my said last Will and Testament, do hereunto set my hand and affix my seal in the presence of the attesting witnesses hereunto subscribing as such at my request.

/s/ AUGUSTUS OCTAVIUS BACON (Seal)

Signed, sealed, declared and published by Augustus Octavius Bacon as the first Codicil to his last Will and Testament in the presence of the undersigned, who each of us, at his request, have subscribed our names as witnesses thereto in the presence of the said Testator and in the presence of each other, this the Sixth day of September (1913) Nineteen hundred and thirteen.

/s/ JNO. T. BOIFEUILLET

/s/ JAMES L. FORT

/s/ EARL B. WILLIAMS

[File endorsement omitted]

[fol. 47]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

Bill in Equity

No. 25864

[Title omitted]

ANSWER OF DEFENDANT, CITY OF MACON—

Filed May 20, 1963

Comes now the City of Macon, one of the defendants named in this action and files this answer to plaintiffs' petition, and shows:

1.

This defendant admits paragraphs one and two of plaintiff's petition.

2.

This defendant denies paragraph three of the petition, as pleaded, but admits that the defendant is a municipality duly created by the Legislature of the State of Georgia and that this defendant holds the legal and equitable title to the property in question, subject to the provisions of Item 1X of the last will and testament of Augustus Octavius Bacon.

3.

On information and belief, this defendant admits paragraph four of the petition.

4.

This defendant admits paragraphs five, six and seven of the petition.

5.

This defendant denies paragraph eight of the petition as pleaded. The said will attached to the petition speaks for

itself and is subject to interpretation and construction by this court.

[fol. 48]

6.

This defendant can neither admit nor deny paragraph nine of the petition, but, on information and belief, admits that subject property has been used exclusively by white persons.

7.

This defendant denies paragraph ten as pleaded. However, this defendant admits that large numbers of Negro citizens have gone upon the subject property and used the same for various recreational activities during the past few weeks, and the City of Macon further admits that the use of the subject property by said members of the Negro race is not in conformity with the expressed intentions of said testator as contained in Item 1X of the aforesaid will. Further, the City of Macon alleges that it has no authority to enforce racially discriminatory restrictions with regard to property held in fee simple or as trustee for a private or public trust and, as a matter of law, is prohibited from enforcing such racially discriminatory restrictions.

8.

This defendant admits the first sentence of paragraph eleven, but denies the remaining portion of said paragraph as pleaded.

9.

Defendant denies paragraph twelve of plaintiffs' petition.

10.

This defendant neither admits nor denies paragraph thirteen of plaintiffs' petition since no answer is required.

[fol. 49] For further plea and answer this defendant shows:

11.

The City of Macon cannot legally enforce racial segregation of the property known as Baconsfield and, therefore, is unable to comply with the specific intention of the said testator with regard to maintaining the property for the exclusive use, benefit and enjoyment of the white women, white girls, white boys and white children of the City of Macon; neither can the City convey said property to private individuals, either for or without consideration, in order to carry out the said specific intention of the said testator.

WHEREFORE :

This defendant prays that this honorable court construe the last will and testament of the late Augustus Octavius Bacon and enter a decree setting forth the duties and obligations of the City of Macon in the premises and give such directions as the court deems proper, just and equitable.

Buckner F. Melton, 305 Persons Building, Macon,
Georgia, Attorney for Defendant, City of Macon.

Duly sworn to by Edgar H. Wilson, jurat omitted in printing.

[fol. 50] Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 51]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

Bill in Equity

No. 25864

[Title omitted]

ANSWER OF DEFENDANTS GUYTON G. ABNEY, J. D. CRUMP,
T. I. DENMARK, AND DR. W. G. LEE, AS SUCCESSOR TRUS-
TEES UNDER THE LAST WILL AND TESTAMENT OF AUGUSTUS
OCTAVIUS BACON, DECEASED—Filed May 27, 1963

Come now Guyton G. Abney, J. D. Crump, T. I. Denmark
and Dr. W. G. Lee, as successor trustees under the Last
Will and Testament of Augustus Octavius Bacon, deceased,

named among others as defendants in the above captioned matter, and answering said petition, respectfully show:

1.

These respondents admit the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of said petition.

2.

Further answering said petition, these respondents, without waiving any of the rights, title or interest vested in them under said Last Will and Testament, join in each and every prayer of said petition and, without limiting the generality of the foregoing, pray that the City of Macon be removed as trustee of the charitable trust created in said Last Will and Testament and Codicil of Augustus Octavius Bacon, deceased.

Jones, Sparks, Benton & Cork, Attorneys for respondents Guyton G. Abney, J. D. Crump, T. I. Den-
[fol. 52] mark and Dr. W. G. Lee, As successor Trustees under the Last Will and Testament of Augustus Octavius Bacon, deceased.

Duly sworn to by Guyton G. Abney, jurat omitted in printing.

[fol. 53] Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 54]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

Bill in Equity

No. 25864

[Title omitted]

MOTION FOR SUMMARY JUDGMENT—Filed May 27, 1963

Come now C. E. Newton, Frank M. Willingham, Mrs. Francis K. Hall, Mrs. Kenneth W. Dunwody, Mr. George P. Ranking, Jr., Mrs. Frederick W. Williams and Mrs. T. J.

Stewart, petitioners in the foregoing matter and make this motion for a summary judgment, and respectfully show:

1.

There is no genuine issue as to any material fact and your petitioners are entitled to a judgment as a matter of law.

Wherefore, your petitioners pray that this their motion for summary judgment be granted and that they have such other and further relief as the Court may deem fit and proper.

Jones, Sparks, Benton & Cork, Attorneys for petitioners.

Certificate of service (omitted in printing).

[fol. 55]

[File endorsement omitted]

[fol. 56]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

Bill in Equity

No. 25864

[Title omitted]

MOTION OF REV. E. S. EVANS, ET AL. TO INTERVENE—
Filed May 29, 1963

Come now, Rev. E. S. Evans, Louis H. Wynne, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall, and Rev. Van J. Malone, and move this Honorable Court for leave to file a petition of intervention in the above-styled action, and for grounds show as follows:

1.

That the property which is the subject matter of the captioned action is presently used as a public park in the City of Macon.

2.

The movants, being Negro residents of the City of Macon, and all other Negroes similarly situated, are subject to being irreparably harmed and damaged, in that, they are subject to being deprived of the use of said park if the prayers of the plaintiffs are sustained and a judgment is rendered in their favor.

3.

That the interests and welfare of the movants will be directly affected by the outcome of said suit, but there are no parties to the subject action who are or can adequately protect the legal rights and interests of the movants or the class which they represent, in that, some of the interests of the defendants and the movants are not only different but are, to some extent, adverse.

[fol. 57]

4.

Wherefore, movants pray that:

- (a) This motion be allowed;
- (b) That movants be granted leave to file their intervenors' petition in the above-captioned action;
- (c) That all of the proceedings in the instant case be held in abeyance pending the filing of the intervenors' pleadings;
- (d) That movants be granted thirty (30) days in which to file their pleadings in the captioned action.

This 26th day of May, 1963.

Donald L. Hollowell, Counsel for Movants.

859½ Hunter St., N. W., Atlanta 14, Georgia, Ja. 5-8372.

[fol. 58]

ORDER—May 28, 1963

Motion read and considered, let the same be filed.

It Is Hereby Ordered that the movants be, and they are granted leave to file their pleadings of intervention in the subject action within (20) Twenty days from the date of this order. All other proceedings in this action are hereby continued pending the filing of said pleadings within the time specified.

This 28 day of May, 1963.

O. L. Long, Judge, Bibb Superior Court.

[File endorsement omitted]

[fol. 59]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

Bill in Equity

No. 25864

[Title omitted]

INTERVENORS' PETITION—Filed June 18, 1963

Comes now, Rev. E. S. Evans, Louis H. Wynne, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall, and Rev. Van J. Malone, who file this their intervention to the claim for relief of the plaintiffs, in their individual capacities and as they constitute the Board of Managers of Baconsfield, and show as follows:

1.

That the intervenors are Rev. E. S. Evans, Louis H. Wynne, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall, and Rev. Van J. Malone, and are citizens of the United States of America and of the State of Georgia. Intervenors are domiciliaries and residents of Bibb County, Georgia, and of the City of Macon, Georgia. Each of the

intervenors is a member of the Negro race and bring this petition of intervention on behalf of themselves and other Negroes similarly situated as a class.

2.

That the present parties defendant, as named and designated in the petition, cannot adequately represent and assert the interest of the intervenors. For the intervenors seek to have Baconsfield Park operated upon an integrated basis and the present parties defendant have an interest in continuing to operate the said park upon a desegregated [fol. 60] basis according to Item 9 of the Will of Augustus Octavius Bacon which is attached to the plaintiffs' petition, marked "Exhibit 2", and thereby incorporated herein by reference.

3.

That any judgment, final order, or decree entered in the captioned action would be binding upon the intervenors and thus prejudicial to them.

4.

That by the Will of Augustus Octavius Bacon, the real property described in Item 9 became vested in the City of Macon in fee simple absolute upon the death of the testator and certain of his devisees and legatees under his will and codicil.

5.

That the Board of Managers charged by the Will with the obligation to control, maintain, and regulate Baconsfield Park is an agency of the City of Macon. Said Board of Managers having become such by the City of Macon having appointed and having designated its members from the date of creation of the park, until the present time, and by the City of Macon having adopted the Acts and Resolutions of said Board and by having acquiesced in the same.

6.

That the restriction and limitation reserving the use and enjoyment of the devise, legacy, and bequest of Baconsfield Park to the City of Macon to "White women, white girls, white boys and white children of the City of Macon," is violative of the public policy of the United States of America, treaties and other international obligations of the [fol. 61] United States and violative of the Constitution and laws of the State of Georgia. The public policy of the United States and of the State of Georgia being that no citizen is to be deprived of the use, benefit, and enjoyment of any publicly owned or supported facility solely because of his race, national origin, creed, or religion.

7.

That this Honorable Court, as an agency of the State of Georgia, cannot consistently with the equal protection clauses of the Fourteenth Amendment of the United States Constitution and the equivalent provisions of the Constitution of the State of Georgia, enter an order, as a court of equity, appointing three (3) freeholders, residents of the City of Macon, to serve as successor trustees, who in such capacity as trustees could operate and maintain Baconsfield Park upon a segregated basis; that is, the use and enjoyment of the same being limited and restricted to "white women, white girls, white boys and white children of the City of Macon." Such an order appointing private citizens as trustees for the manifest and express purpose of operating, managing, and regulating public property which passed to the City of Macon under a charitable trust created by will in a racially discriminatory manner, is violative of the Fourteenth Amendment to the United States Constitution and of the equivalent provisions of the Constitution of the State of Georgia.

[fol. 62] For a Second Answer and Defense

8.

That at the time the said will was probated and the real property known as Baconsfield Park passed to the City of Macon, the law of the land and of the State of Georgia as expressed and stated in the case of *Plessy v. Ferguson*, 163 U. S. 537, and decisions of the courts of this state and the laws of the State of Georgia consistent therewith permitted a racially restrictive condition and limitation imposed upon a public charitable trust to be enforced by the courts of the state wherein the trust was located. Since that time, the law of the land as reflected in the cases of *Brown v. Board of Education*, 347 U. S. 483, and the *Memphis Park Case* (decided in the United States Supreme Court May 27, 1963), and in decisions and judgments of the courts of this State and the laws consistent therewith, has changed. That is, discrimination based solely upon race is no longer a permissible object of state action whether such action is that of an administrative agency, the state executive officers and employees, the state legislature, or of the state courts.

9.

That, although the charitable legacy, device, and bequest at the time of its creation was capable of being executed in the exact manner provided for in the will of the testator, by operation of law it is no longer capable of further execution in the exact manner provided for by the testator, Augustus Octavius Bacon. That this Court (sitting in equity) effectuate the general charitable purpose of the testator to establish and endow a public park within the [fol. 63] City of Macon, by refusing to appoint private persons as trustees of the said Baconsfield Park.

10.

That the plaintiffs as they appear by name and designation in the petition, are not proper parties to maintain a petition for the removal and appointment of trustees of a

public charitable trust as it does not appear that they have the requisite authority as required by law nor the requisite capacity and standing as required by law.

11.

That the plaintiffs, the named individuals and the Board of Managers do not come into this Court with clean hands. The plaintiffs seek judicial sanction of their alleged and avowed intent, design, and purpose to have private persons appointed in their place and stead as trustees, managers of Baconsfield Park, so that the said Baconsfield Park may be operated in violation and degradation of the constitutional rights of the intervenors.

Wherefore, the intervenors respectfully pray that they may have judgment against the petitioners with costs upon the petitioners.

Donald L. Hollowell, Horace T. Ward, Counsel for
Intervenors.

Howard Moore, Jr., Of Counsel.

[fol. 64] June 14, 1963.

Certificates of service (omitted in printing).

[File endorsement omitted]

[fol. 65]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

No. 25864

Bill in Equity

[Title omitted]

AMENDMENT TO PLAINTIFFS' PETITION—

Filed January 8, 1964

Come now the plaintiffs in the above styled case and by leave of the Court first had and obtained, amend their petition as follows:

1.

By adding thereto a paragraph "14" to read as follows: "since the time when the original petition was filed, an intervention has been filed on behalf of certain negro residents of Macon, Bibb County, Georgia, to-wit: Rev. E. S. Evans, Louis H. Wynne, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall, and Rev. Van J. Malone. That intervention was filed on behalf of the above named parties and on behalf of 'other Negroes similarly situated' as a class".

2.

By adding thereto paragraph "15" to read as follows; "Plaintiffs show that by the phrase 'other Negroes similarly situated' the intervenors encompass all Negro residents of Macon, Bibb County, Georgia. Plaintiffs show that each and every one of the intervenors named in the above paragraph plus each and every member of the Negro race resident in Macon, Bibb County, Georgia, as the class represented should be permanently enjoined from entering the grounds of Baconsfield, using any of the facilities located thereon or in any other way interfering with plaintiffs in [fol. 66] their efforts to carry out the express testamentary wishes of A. O. Bacon relating to the classes of persons to be benefited by his grant of Baconsfield."

3.

By adding thereto a paragraph "16" to read as follows: "Plaintiffs show that a trust was established under the Will of A. O. Bacon for his heirs. The trust has been executed as regards four of his seven heirs now living and a distribution of property made to them. They are A. O. B. Sparks, Willis B. Sparks, Jr., Virginia Lamar Sparks and M. Garten Sparks. The interests of the remaining three heirs, i.e. Louise Curry Williams, Shirley Curry Cheatham, and Manley Lamar Curry, are still held under an unexecuted trust by four trustees holding under the authority of the will, to-wit: Guyton Abney, J. D. Crump, T. I. Den-

mark and Dr. W. G. Lee. Plaintiff shows that these seven persons have a definite interest in the disposition of this litigation, since if the trust purpose expressed in the Will of A. O. Bacon with respect to the designation of persons who may use Baconsfield, fails, the property comprising Baconsfield together with property, the rentals of which provide the upkeep of Baconsfield, will revert and lapse into the estate of A. O. Bacon thence to be distributed to the above named heirs."

4.

By adding thereto a paragraph "17" to read as follows: "Plaintiffs show that there are no parties to this case with an interest identical to that of the Sparks heirs of A. O. Bacon such as to afford adequate representation to [fol. 67] the interests of the said heirs."

5.

By adding thereto a prayer to read as follows: "Plaintiffs pray that A. O. B. Sparks, Willis B. Sparks, Jr., Virginia Lamar Sparks, and M. Garten Sparks be allowed to intervene and that Guyton Abney, J. D. Crump, T. I. Denmark and Dr. W. G. Lee be allowed as Trustees to assert the interest of Louise Curry Williams, Shirley Curry Cheatham and Manley Lamar Curry."

6.

By adding thereto a prayer to read as follows: "Plaintiffs pray that each and every one of the intervenors named in paragraph one, plus each and every member of the Negro race resident in Macon, Bibb County, Georgia, as the class represented be permanently enjoined from entering the grounds of Baconsfield, using any of the facilities located thereon, or in any other way interfering with plaintiffs in their efforts to carry out the express testamentary wishes of A. O. Bacon relating to the classes of persons to be benefited by his grant of Baconsfield."

Wherefore, plaintiffs pray that their amendment be allowed.

Jones, Sparks, Benton & Cork, Attorneys for Plaintiffs.

ORDER—January 8, 1964

The within amendment being presented to me, it is allowed and ordered filed, subject to demurrer.

This the 8 day of January, 1964.

O. L. Long, J.S.C.M.C.

[fol. 68] Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 69]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

No. 25864

Bill in Equity

[Title omitted]

PETITION FOR INTERVENTION—Filed January 8, 1964

The petition of A. O. B. Sparks, Willis B. Sparks, Jr., Virginia Lamar Sparks, and M. Garten Sparks, respectfully shows to the court the following facts:

1.

Petitioners herein are grandchildren of the heirs of A. O. Bacon, deceased, being children of his deceased daughter, Mary Louise Bacon Sparks. The widow and only other child of the said A. O. Bacon who survived him are now deceased.

2.

Petitioners have an interest in the subject matter of the above styled case, since if the trust purpose expressed in

the Will of A. O. Bacon, including the restriction of the use of Baconsfield Park to white persons, is not carried out, the property will lapse into the Estate of A. O. Bacon, ultimately to be distributed to his heirs.

3.

Petitioners show that there is no party presently before the Court to represent their said interest.

4.

Petitioners present the following requests for relief praying that:

(a) They be allowed to intervene and be heard.

(b) That all of the prayers of plaintiffs, the Board of Managers of Baconsfield, be granted.

[fol. 70] (c) That each and all of the Negro intervenors and all of those whom they represent be permanently enjoined from entering Baconsfield Park or from in any way interfering with the Board's management of the Park for the use and benefit of white persons only.

5.

Further, petitioners emphasize beyond all chance for doubt that their desire is that the above enumerated prayers be granted, that the City of Macon be replaced as Trustee and that such other and further relief be granted by this Court as will insure that Baconsfield Park will continue to be operated in strict accordance with the Will of A. O. Bacon. It is the most fervent hope of intervenors that Baconsfield will remain as a memorial to the memory of the infant sons of A. O. Bacon and as a park for the benefit of the white boys, white girls and white women of Macon, Georgia, under the direction of the plaintiff Board of Managers.

6.

Petitioners further pray that if this Court does not enter an order in this case effectuating the continued administration of Baconsfield in accordance with the Will of A. O. Bacon for the sole benefit of white persons, That in that event,—And Only In That Event—this honorable Court decree that the trust purpose having failed, the property included in Baconsfield and that property, the rental of which had supplied the income for the upkeep of Baconsfield, both be held to revert and lapse into the estate by operation of law.

Jones, Sparks, Benton & Cork, Attorneys for Petitioners.

[fol. 71]

ORDER—January 8, 1964

The within petition for intervention being presented to me, it is allowed and ordered filed, subject to demurrer.

This the 8 day of January, 1964.

O. L. Long, J. S. C. M. C.

Certificate and acknowledgment of service (omitted in printing).

[File endorsement omitted]

[fol. 72]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

No. 25864

Bill in Equity

[Title omitted]

AMENDMENT TO ANSWER AND CROSS BILL—

Filed January 8, 1964

Come now Guyton Abney, J. D. Crump, T. I. Denmark, and Dr. W. G. Lee, defendants in the above styled case, and

by leave of the Court first had and obtained amend their answer as follows:

1.

By adding a paragraph 3 to read as follows: "These defendants are Trustees under the Will of A. O. Bacon for the benefit of certain of his heirs, to-wit: Louise Curry Williams, Shirley Curry Cheatham and Manley Lamar Curry. A similar trust has become executed with respect to certain other heirs, to-wit: A. O. B. Sparks, W. B. Sparks, Jr., Virginia Lamar Sparks, and M. Garten Sparks, but the trust with respect to the first named group of heirs, which shall hereinafter be referred to as the 'Curry Heirs', has not become executed."

2.

By adding a paragraph 4 to read as follows: "defendants show that the Curry Heirs have an interest in the subject matter of the above styled case, since if the trust purpose expressed in the Will of A. O. Bacon, including the restriction of the use of Baconsfield to white persons, is not carried out, the property will lapse into the Estate of A. O. Bacon, ultimately to be distributed to his heirs."

[fol. 73]

3.

By adding by way of a cross bill the following prayer: "Defendants as such Trustees and on behalf of the said Curry heirs present the following requests for relief praying:

(a) That they be allowed to assert the interest of the Curry heirs.

(b) That all of the prayers of plaintiffs, the Board of Managers of Baconsfield, be granted.

(c) That each and all of the Negro intervenors and all of those whom they represent be permanently enjoined from entering Baconsfield or from in any way inter-

fering with the Board's management of Baconsfield for the use and benefit of white persons only."

4.

By adding a paragraph to read as follows: "Further, defendants as such Trustees and on behalf of the Curry heirs emphasize beyond all chance for doubt that the desire of the Curry heirs is that the above enumerated prayers be granted, that the City of Macon be replaced as Trustee and that such other and further relief be granted by this Court as will insure that Baconsfield will continue to be operated in strict accordance with the Will of A. O. Bacon. It is the most fervent hope of the Curry heirs that Baconsfield will remain as a memorial to the memory of the infant sons of A. O. Bacon and as a park for the benefit of the white boys, white girls and white women of Macon, Georgia, under the direction of the plaintiff Board of Managers."

[fol. 74]

5.

By adding by way of cross bill the following prayer: "Defendants as such Trustees and on behalf of the Curry heirs further pray that if this Court does not enter an order in this case effectuating the continued administration of Baconsfield in accordance with the Will of A. O. Bacon for the sole benefit of white persons, that in that event,—And Only In That Event—this honorable Court decree that the trust purpose having failed, the property included in Baconsfield and that property, the rental of which had supplied the income for the upkeep of Baconsfield, both be held to revert and lapse into the estate by operation of law."

Jones, Sparks, Benton & Cork, Attorneys for the
aforementioned Trustees.

ORDER—January 8, 1964

The within Amendment to Answer and Cross Bill being presented to me, it is allowed and ordered filed, subject to demurrer.

This the 8 day of January, 1964.

O. L. Long, J.S.C.M.C.

[fol. 75] Certificate and acknowledgment of service
(omitted in printing).

[File endorsement omitted]

[fol. 76]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

No. 25864

Bill in Equity

[Title omitted]

AMENDMENT TO ANSWER OF CITY OF MACON—
Filed February 5, 1964

Comes now the City of Macon, defendant in the above stated case, and by leave of the Court first had and obtained amends its answer heretofore filed and respectfully shows:

1.

Pursuant to a resolution adopted by the Mayor and Council of the City of Macon at its regular meeting on February 4, 1964, a copy of which is hereto attached marked Exhibit A, the City of Macon acting through its Mayor and Clerk has resigned as Trustee under Items 9th and 10th of the Will of the late Senator Augustus Octavius Bacon, a copy of said resignation being hereto attached marked Exhibit B.

2.

Upon the acceptance of said resignation by this Court and the appointment of new Trustees to serve in lieu of the City of Macon, if this Court sees fit to appoint such new Trustees, the City of Macon will have no further duties to perform as such Trustee and will no longer be a necessary or proper party in said case.

Wherefore, defendant prays:

(1) That this amendment be allowed and ordered filed as part of the record in said case;

[fol. 77] (2) That the resignation of the City of Macon as Trustee under the Will of Senator Augustus Octavius Bacon be accepted, and that the Court take such further action in the premises as to the Court may seem meet and proper;

(3) That defendant be hence discharged.

Trammell F. Shi, City Attorney.

ORDER

The foregoing amendment allowed and ordered filed.

This February 5, 1964.

O. L. Long, J.S.C.M.C.

Certificates of service (omitted in printing).

[fol. 79]

EXHIBIT "A" TO AMENDMENT TO ANSWER

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF MACON ADOPTED FEBRUARY 4, 1964

WHEREAS, in Civil Action No. 25864, pending in the Superior Court of Bibb County, Georgia, captioned *Charles E. Newton, et al. vs. City of Macon, et al.* the defendant City of Macon has heretofore filed its answer admitting that it has not for some time prior to filing said answer carried out as Trustee all of the provisions of the trust established in Items 9th and 10th of the Last Will and Testament of the Late Senator Augustus Octavius Bacon with reference to the property known as Baconsfield, said Items 9th and 10th reading as follows:

"Item 9th

"I direct that there by said Trustees laid off and accurately defined and permanently marked by enduring

monuments, the following described part of my farm which is situated in part within and part without the corporate limits of the City of Macon, and known as 'Baconfield,' the same to be set a part and dedicated to the purposes, uses and enjoyments as hereinafter more fully set forth and detailed. The said part of the property thus set apart is bounded as follows: There is on the Southeastern part of my said farm a four acre rectangular tract which formerly belonged to James Pepper, and which is commonly known as the 'Pepper Place' the same having been purchased and added to my farm, for this description, beginning at [fol. 80] the Southeastern corner of said rectangular tract, the boundary line of the property runs in a Northerly direction along the Eastern boundary line of said Pepper Place and thereafter in a direct prolongation of the same to a point nine hundred and sixty-three feet and five-tenths from the said starting point, thence in a slightly northwestern direction sixty-three feet and five-tenths, thence in a northerly direction three hundred and thirty-two feet across boulevard Baconfield to a point on the Western side of said Boulevard, thence three hundred and sixteen feet along the western border of said Boulevard to a point on the same immediately opposite the junction of said Boulevard and Gray Street, thence, in a direction a little West of North, twenty-four hundred and eighty feet to an elm tree, thence at right angles sixteen hundred and sixty-two feet to the bank of the Ocmulgee River, thence in a Southeasterly direction along the bank of said river thirty-three hundred and ninety-seven feet, thence in a direct line to the Southwest corner of the said Pepper lot, thence four hundred and thirty-seven feet along the Southern boundary line of said Pepper lot to the original starting point; the said metes and bounds of the said tract of land being correctly platted and defined on a map of the same hereto attached, made by H. D. Cutter and upon which for the purpose of identification, I have endorsed my original signa-

[fol. 81] ture. The larger part of the property thus described and bounded is a portion of a trust estate originating with me and created solely by me for the benefit of my wife and children during my life and for their benefit and use after my death in such estates and with such remainders as should be specified and directed by me in my last Will and Testament. For the purpose of carrying out fully the purpose and intent of the trust thus created, I hereby give, bequeath and devise the said property consisting of the tract of land hereinbefore described and bounded and platted on said map unto the said Trustees, viz. Alexander Lawton Miller, Custis Nottingham, Richard C. Jordan and Warren Roberts, in trust for the sole joint use, benefit and enjoyment of my wife, Virginia Lamar Bacon, and of my two daughters, Mary Louise Bacon Sparks and Augusta Lamar Bacon Curry, during the term of their natural lives, as follows: So long as they shall all live they shall be entitled to the equal enjoyment and use of the same including all revenues and profits in any way derived therefrom. When Mrs. Virginia Lamar Bacon shall die, the use, benefit and enjoyment of the entire property herein described and bounded shall belong to my two said daughters equally, including all revenues and profits in any way derived from the same, during the full term of their natural lives. Upon the death of either of my said daughters, [fol. 82] her interest in said property shall be enjoyed by her children and the survivors of them until the death of my last surviving daughter. Upon the death of my said wife and of each of my said daughters, and of the last survivors of them, the trust created in this property by this said Ninth Item of this Will in the said tract of land thus defined, bounded and platted shall crase, and thereafter shall close all interest and right of enjoyment of any person or persons whomsoever in said property except as hereinafter specified and provided, to-wit: When my wife, Virginia Lamar Bacon and my two daughters, Mary Louise Bacon

Sparks and Augusta Lamar Bacon Curry, shall all have departed this life, and immediately upon the death of the last survivor of them, it is my will that all right, title and interest in and to said property hereinbefore described and bounded, both legal and equitable, including all remainders and reversions and every estate in the same of whatsoever kind, shall thereupon vest in and belong to the Mayor and Council of the City of Macon, and to their successors forever, in trust for the sole, perpetual and unending use, benefit and enjoyment of the white women, white girls, white boys and white children of the City of Macon to be by them forever used and enjoyed as a park and pleasure ground, subject to the restrictions, government, management, rules and control of the Board of Managers [fol. 83] hereinafter provided for; the said property under no circumstances, or by any authority whatsoever, to be sold or alienated or disposed of, or at any time for any reason devoted to any other purpose or use excepting so far as herein specifically authorized. for the control, management, preservation and improvement of said property there shall be a Board of Managers consisting of seven persons of whom not less than four shall be white women, and all seven of whom shall be white persons. The Members of this Board shall first be selected and appointed by the Mayor and Council of the City of Macon, or by their successors in said trust; and all vacancies in said Board shall be filled by appointments made by the Mayor and Council of the City of Macon, or their successors, upon nomination made by the said Board of Managers and approved by the said Mayor and Council of the City of Macon or their successors. If practicable, I desire that there shall be as a member of said Board of Managers at least one male or female descendant of my own blood, not only in the Board as at first constituted, but at all times thereafter. The said Board of Managers shall at all times have complete and unrestricted control and management of the said property, with power to make all

needful regulations for the preservation and improvement of the same, and rules for the use and enjoyment thereof, with power to exclude at any time any person [fol. 84] or persons of either sex, who may be deemed objectionable, or whose conduct or character may by said Board be adjudged or considered objectionable, or such as to render for any reason in the judgment of said Board their presence in said grounds inconsistent with or prejudicial to the proper and most successful use and enjoyment of the same for the purposes herein contemplated. The Board of Managers shall have the power to admit to the use of the property the white men of the City of Macon, and white persons of other communities, with the right reserved to at any time withhold or withdraw such privilege in their discretion. To enable the Board of Managers to have a fund for the payment of necessary expenses connected with the management, improvement and preservation of said property, including when possible drives and walks, casinos and parlors for women, play grounds for girls and boys and pleasure devices and conveniences and grounds for children, flower yards and other ornamental arrangements, I direct that said Board may use for purposes of income in any manner they may deem best that portion of the property that lies Easterly of the road known as Boulevard Baconsfield, beginning at the north Macon bridge and including the 'Pepper Place,' also all of said property lying on the river which is property classed as low lands, or river bottom; but in no event and under no circumstances shall any part of the property herein conveyed and bounded and [fol. 85] platted be ever sold or otherwise alienated or practically disposed of by any person or authority whatsoever, and excepting the portions of the property which may be used for purposes of revenue as aforesaid all the remainder of said property shall forever and in perpetuity be held for the sole uses, benefits and enjoyments as herein directed and specified. If it should be held that said property is subject to

taxation when devoted to such uses as a park or pleasure ground, I request that proper steps be taken to secure from the State of Georgia a perpetual release from all liability to taxation.

"I take occasion to say that in limiting the use and enjoyment of this property perpetually to white people, I am not influenced by any unkindness of feeling or want of consideration for the Negroes, or colored people. On the contrary I have for them the kindest feeling, and for many of them esteem and regard, while for some of them I have sincere personal affection.

"I am, however, without hesitation in the opinion that in their social relations the two races should be forever separate and that they should not have pleasure or recreation grounds to be used or enjoyed, together and in common. I am moved to make this bequest of said property for the use, benefits and enjoyment of the white persons herein specified, by my gratitude to [fol. 86] and love of the people of the City of Macon from whom through a long life time I have received so much of personal kindness and so much of public honor; and especially as a memorial to my ever lamented and only sons, Lamar Bacon who died on the 21st day of December 1884 and Augustus Octavius Bacon, Jr. who died on the 27th day of the same year. And I conjure all of my descendants to the remotest generation as they shall honor my memory and respect my wishes to see to it that this property is cared for, protected and preserved forever for the uses and purposes herein indicated. I direct that said property during the lives of my said wife and my two said daughters shall continue to be known and designated as 'Baconsfield' and that after their death, it shall be forever and perpetually known as 'Baconsfield,' and shall be so designated in all matters, documents and papers relating thereto.

"While I make no restrictions, I request that the Managers will preserve on the property my present house residence, and the smaller house nearby which I

have personally occupied for so many years and which I have called 'The Hut' the said houses to be used to the best advantage, and in such localities on the property as may be most desirable, for the comfort, convenience and pleasure of the white women, girls, boys and children herein designated: and I trust that the [fol. 87] managers of said property may find it to the best interest of those who are to enjoy this property that there shall be perpetually preserved the present woods and trees upon the same. And I specifically direct that during the said trust estate in said property for the uses and benefit of my wife Virginia Lamar Bacon and of my two daughters Mary Louise Bacon Sparks, and Augusta Lamar Bacon Curry, neither the said residence house nor the said smaller house known as 'The Hut' shall be removed or destroyed or materially altered by addition or otherwise, but that the same during the entire terms of said trust estate for life, be carefully preserved in their present condition; and further that during the terms of said trust estates and during the lives of my said wife and my two said daughters, the woods and trees on said property be carefully preserved, and that on one of them be cut down or destroyed for any purpose whatsoever; and I further specifically provide and direct that the said trustees hereinbefore named and their successors shall not have power or authority to sell or otherwise alienate or dispose of the tract of land thus described, bounded and platted or any part thereof during the continuance of said trust or trusts or at any other time, under any circumstances and upon any account whatsoever, and all such power to make such sale or alienation is hereby expressly denied to them, and to all others."

[fol. 88]

"Item 10th

"To make still further provision for the preservation, management and improvement of the property set apart in the foregoing 9th Item of this Will as a park and pleasure grounds as aforesaid, I will and be-

queath to the Mayor and Council of the City of Macon, and to their successors, ten bonds of the Macon Railway and Light Co., each of said ten bonds being for \$1000.00 and in the aggregate being for \$10,000.00 and bearing interest at the rate of five per centum per annum, and at present in the custody of the The Riggs National Bank in Washington, D. C., the said bonds and all monies or things of value resulting and derived therefrom to be held by the said Mayor and Council of the City of Macon and their successors for the following trusts and uses, to-wit: So long as the property known and to be known perpetually as 'Baconsfield,' specified, bounded and described in the foregoing 9th Item of this Will, shall continue to be held in trust by the Trustees named in the said foregoing 9th Item and their successors for the use and beiefit of my said wife and my two said daughters, or either of them, until the said property shall vest in the Mayor and Council of the City of Macon to be held in trust for the purposes specified and for the uses directed in the said 9th Item. The said Mayor and Council of the City of Macon shall as said Trustees collect the semi-[fol. 89] annual interest which shall be paid on said bonds, and as promptly as practicable invest the same in interest bearing bonds to be added to and included in said trust fund; and the interest received on the additional bonds thus purchased, and from all other bonds additional thereto resulting from and accruing to said fund, shall in like manner be reinvesting in interest bearing bonds, so that all income from said fund or in any manner accuring to said fund shall as far as practicable be semi-annually compounded and added to the principal of the original fund. When the said 9th Item and their cussessors shall cease to hold said property in trust for my said wife and my said daughters, as provided in the said 9th Item, and when as therein provided, the Mayor and Council of the City of Macon shall as Trustees be vested with said property and the title to the same for the uses therein set

forth, they shall as may be required for the preservation, maintenance and improvement of said park and pleasure ground, pay over to the Board of Managers hereinbefore provided for, the income subsequently received from said trust fund constituted of and resulting from the said bonds; and all income derived from said property, and from said bonds, and the proceeds thereof, when not required for the needs of said park and pleasure ground, be added to the said principal fund, to the end that from increased income it may be in greater and ever increasing degree beautiful [fol. 90] and developed and equipped for the benefit and enjoyment of those for whose pleasure and happiness it is designated. If for any reason it should be held that the Mayor and Council of the City of Macon have not the legal power under the charter of the City to hold said fund in trust for the purposes specified, then unless said power is obtained through appropriate legislation, I direct that the powers herein expressed be conferred upon a trustee to be selected by the Mayor and Council of the City of Macon, with such safeguards and restrictions as may be prescribed by them for the perpetual safekeeping and management of the fund. And I give a similar direction if for any reason it should be held that the Mayor and Council of the City of Macon have not the legal power under their charter to hold in trust for the purposes specified the property designated for said park and pleasure ground, unless said required power is conferred by appropriate legislation. Should the Mayor and Council of the City of Macon at any time consent to do so, then I direct that they be authorized to receive the fund constituted of said bonds and all additions thereto and the proceeds thereof, and cover the same into the treasury of the City, in consideration of the perpetual obligation of the City to be evidenced by its bond or otherwise, to provide and pay over annually to the said Board of Managers an amount equal to five per centum interest [fol. 91] upon the sum thus covered into the treasury,

to be devoted by said Board to the uses hereinbefore specified. In making this bequest as expressed in this and the preceding item of my Will, I have been mindful to preserve the full use and enjoyment of the real estate to my wife and daughters during their natural lives, and also of the fact that the entire bequest in value represents a very much smaller proportion of my estate than would have been the share in it of my two sons had they lived. As there will be no one of my descendants who now bears my name by right of birth, or through voluntary choice, an additional reason is furnished why I should deem it proper that in devoting this property to the uses specified, I should at the same time link their memories with the pleasures and enjoyments of the women and children and girls and boys of their own race in the community of which they once formed a happy part."

and,

WHEREAS, under certain decisions of the Federal courts the City of Macon has realized that it could not as a municipal corporation carry out all of said provisions; and

WHEREAS, the Mayor and Council deem it to be in the public interest that Baconsfield be operated and maintained for the benefit of the public rather than for private benefit or profit; and

WHEREAS, the Mayor and Council are greatly concerned [fol. 92] that if Baconsfield is not operated and maintained in accordance with all of the provisions of the Will of Senator Bacon, the property may revert to private persons who are heirs at law of or legatees under the Will of Senator Bacon, in which case Baconsfield would become commercial or residential property or property of a nature wherein no part of the public would have the enjoyment of the property contemplated by Senator Bacon; and

WHEREAS, the City is advised that the income producing property which the late Senator Bacon bequeathed in trust for the purpose of maintaining Baconsfield is sufficient for

that purpose and that if the Court decides to appoint new Trustees the park may be economically maintained by the Trustees in accordance with the expressed intentions of the late Senator Bacon, and at no cost to the City in connection with such operations and maintenance; and

WHEREAS, it is the considered opinion of the Mayor and Council that it is against good conscience for the City of Macon to continue to serve as Trustee under said Will under circumstances where as such Trustee it cannot carry out the plain and unambiguous terms of the trust; and

WHEREAS, in the light of the foregoing it is the considered opinion of the Mayor and Council that the City of Macon should forthwith resign as Trustee under the Will of Senator Bacon;

Now, THEREFORE, be it resolved by the Mayor and Council of the City of Macon, and it is hereby resolved, that the City of Macon forthwith resign as Trustee under the trust established in Items 9th and 10th of the Will of the late Senator Augustus Octavius Bacon.

[fol. 93] RESOLVED FURTHER, that the Mayor and the Clerk of Council be authorized to sign in the name of the City of Macon a written resignation of such trust and deliver the same to Mr. Trammell F. Shi, City Attorney, with instructions to him to deliver it to the Superior Court of Bibb County, Georgia, in the litigation now pending instituted by the Board of Managers of Baconsfield, created in said Will, against the City of Macon and others.

[fol. 94]

EXHIBIT "B" TO AMENDMENT TO ANSWER

RESIGNATION OF THE CITY OF MACON AS TRUSTEE UNDER WILL OF SENATOR AUGUSTUS OCTAVIUS BACON

Pursuant to a resolution adopted on the 4th day of of February, 1964, by Mayor and City Council of the City of Macon, the City of Macon hereby resigns as Trustee of the property known as Baconsfield under the trust estab-

lished in Items 9th and 10th of the Will of the late Senator Augustus Octavius Bacon.

IN WITNESS WHEREOF, as directed in the aforesaid resolution, the City of Macon has caused these presents to be executed by the Mayor and the Clerk of Council and its seal affixed, this the 4th day of February, 1964.

THE CITY OF MACON

By B. F. Merritt, Jr.

Mayor of the City of Macon

Attest: Alex B. Cameron
Clerk of Council
City of Macon

(Seal of the City of Macon)

[File endorsement omitted]

[fol. 95]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

No. 25864

Bill in Equity

[Title omitted]

AMENDMENT TO INTERVENORS' PETITION—
Filed March 5, 1964

Comes now, the intervenors in the above-styled case, Rev. E. S. Evans, Louis H. Wynne, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall, and Rev. Van J. Malone, and by leave of Court first had and obtained, amend their petition by adding thereto four additional paragraphs to be known as paragraphs 12, 13, 14, and 15, and a prayer, as follows:

12.

That the equal protection clause of the Fourteenth Amendment to the United States Constitution prohibits this Court from enjoining Negroes from use of the park.

13.

That the equal protection clause of the Fourteenth Amendment prohibits this Court from accepting the resignation of the City of Macon as trustee and appointing new trustees for the purpose of enjoining the racially discriminatory provision in the will of A. O. Bacon.

14.

That Georgia Code Annotated, Section 69-504 prescribes racial discrimination and is therefore violative of the equal [fol. 96] protection clause to the Fourteenth Amendment. Since the racially discriminatory provision in A. O. Bacon's will was dictated by that unconstitutional statute, enforcement of the racially discriminatory provision is constitutionally prohibited.

15.

Georgia Code Annotated, Section 108-202, properly construed, requires that the racially discriminatory provision in A. O. Bacon's will be declared null and void.

Wherefore, the intervenors respectfully pray that this Court withhold approval of the attempted resignation of the City of Macon as trustee under the will of A. O. Bacon, direct the City of Macon to continue to fulfill this paramount constitutional obligation to administer the park on a racially non-discriminatory basis, and deny the injunction sought by plaintiffs to exclude Negroes from use of the park.

Wherefore, the intervenors pray that this amendment be allowed.

Donald L. Hollowell, 859½ Hunter St., N. W., Atlanta, Georgia 30314, Attorney For Intervenors.

William H. Alexander, Of Counsel For Intervenors.

[fol. 97]

ORDER—March 5, 1964

The foregoing amendment read and considered,
It Is Ordered that the same be filed, subject to objections.
This 5 day of March, 1964.

O. L. Long, Judge, Superior Court, Macon Judicial
Circuit.

[File endorsement omitted]

Certificate of Service (omitted in printing).

[fol. 99]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

No. 25864

Bill in Equity

CHARLES E. NEWTON, ET AL.,

v.

CITY OF MACON, ET AL.

ORDER AND DECREE—March 10, 1964

The Motion for Summary Judgment filed in behalf of petitioners in the above captioned matter having come on regularly to be heard, and the Court having duly considered all pleadings filed in behalf of all parties to said cause and the briefs filed in behalf of petitioners and the intervenors Rev. E. S. Evans, Louis H. Wynne, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall, and Rev. Van J. Malone, it is

Considered, Ordered and Adjudged as follows:

(1) The intervenors named above are proper parties to this case and are proper representatives of the class

which their intervention states they represent, to-wit, the negro citizens of Bibb County, Georgia, and the City of Macon, Georgia.

(2) The defendants Guyton G. Abney, J. D. Crump, T. I. Denmark and Dr. W. G. Lee, as successor Trustees under the Last Will and Testament of Augustus Octavius Bacon, deceased, are also proper parties to the case, as are the intervenors A. O. B. Sparks, Willis B. Sparks, Jr., Virginia Lamar Sparks and M. Garten Sparks.

(3) The defendant the City of Macon having submitted its resignation as Trustee of the property described in the petition and known as Baconsfield, said resignation is here-[fol. 100] by accepted by the Court.

(4) Under the principle that a trust shall not fail for want of a trustee it becomes the duty of this Court to appoint new trustees to serve in lieu of the City of Macon; and the following, all being citizens and residents of Bibb County, Georgia, are hereby appointed as Trustees, to-wit, Hugh M. Comer, Lawton Miller and B. L. Register.

(5) The Court hereby retains jurisdiction for the purpose of appointing another trustee or trustees in the event any of the persons named above fails to accept his appointment or in the event of the future death, incompetency or other cause whereby any or all of such Trustees fail or cease to act as such.

(6) Since the relief herein granted is also that primarily sought by the defendants Guyton G. Abney, et al., as Trustees under the Last Will and Testament of Augustus Octavius Bacon and by intervenors A. O. B. Sparks, Willis B. Sparks, Jr., Virginia Lamar Sparks and M. Garten Sparks, it is therefore unnecessary to pass upon and the Court does not pass upon the secondary contentions outlined in paragraph 5 of the amendment to the answer and cross bill filed by Guyton G. Abney, et al., as Trustees and in paragraph 6 of the petition for intervention filed by the above named intervening heirs.

So Ordered, this the 10 day of March, 1964.

O. L. Long, J.S.C.M.C.

[File endorsement omitted]

[fol. 101]

ATTACHMENT TO ORDER

**RESIGNATION OF THE CITY OF MACON AS TRUSTEE
UNDER WILL OF SENATOR AUGUSTUS OCTAVIUS BACON**

Pursuant to a resolution adopted on the 4th day of February, 1964, by Mayor and City Council of the City of Macon, the City of Macon hereby resigns as Trustee of the property known as Baconsfield under the trust established in Items 9th and 10th of the Will of the late Senator Augustus Octavius Bacon.

IN WITNESS WHEREOF, as directed in the aforesaid resolution, the City of Macon has caused these presents to be executed by the Mayor and the Clerk of Council and its seal affixed, this the 4th day of February, 1964.

THE CITY OF MACON

By B. F. Merritt, Jr.

Mayor of the City of Macon

Attest: Alex B. Cameron

Clerk of Council

City of Macon

(Seal of the City of Macon)

FILED IN OFFICE

5 day of Feb. 1964

Era B. Goodner

Deputy Clerk

[fol. 102]

IN THE SUPERIOR COURT, BIBB COUNTY, GEORGIA

No. 25864

Bill in Equity

[Title omitted]

ACCEPTANCE OF TRUST—Filed March 12, 1964

Come now the undersigned, Hugh M. Comer, Lawton Miller and B. L. Register, and pursuant to the Order and Decree of Honorable O. L. Long, Judge, Superior Courts, Macon Circuit, dated March 10, 1964, hereby formally accept their appointment as successor Trustees under Items IX and X of the Last Will and Testament of Augustus Octavius Bacon, Deceased.

This 11th day of March, 1964.

Hugh M. Comer, Lawton Miller, B. L. Register.

[File endorsement omitted]

[fol. 103] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 105]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

Docket No. 22534

 REV. E. S. EVANS, et al., Plaintiffs-in-error,

—vs.—

CHARLES E. NEWTON, et al., Defendants-in-error.

 MOTION TO AMEND BILL OF EXCEPTIONS—
Filed May 8, 1964

To the Honorable Chief Justice and the Honorable Justices
of the Supreme Court of Georgia:

Comes now the plaintiffs-in-error, Rev. E. S. Evans,
et al. in the above-styled case which is before this Honor-

able Court by virtue of being an equity action from the Superior Court of Bibb County, who with leave of Court, and pursuant to Georgia Code Annotated, Sections 6-913, 6-1309, 6-1401, and 81-1301, amend page one (1) of their bill of exceptions by striking the designation of plaintiffs-in-error and defendants-in-error, respectively, and substituting therefor the following:

Rev. E. S. Evans, Louis H. Wynn, Rev. J. L. Key,
Rev. Booker W. Chambers, William Randall, and
Rev. Van J. Malone, Plaintiffs-in-error,

—vs.—

The City of Macon; A. O. B. Sparks, Willis B. Sparks,
Jr., Virginia Lamar Sparks, M. Barton Sparks,
Heirs at law of A. O. Bacon; Guyton Adley, J. D.
Crump, J. J. Denmark, Dr. W. G. Lee, Successor
Trustees under the Will of A. O. Bacon; Hugh M.
[fol. 106] Comer, Lawton Miller, and B. L. Register,
Successor Trustees in lieu of the City of Macon,
Defendants-in-error.

Wherefore, plaintiffs-in-error pray that this their amendment be allowed.

Donald L. Hollowell, William H. Alexander, Attorneys for Plaintiffs-in-Error.

[fol. 107] Certificate of Service (omitted in printing).

[fol. 108]

ORDER

The foregoing Amendment having been read and considered, the same is allowed and ordered filed.

_____, Justice, Supreme Court of
Georgia.

[fol. 109] [File endorsement omitted]

[fol. 110]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

Docket No. 22534

[Title omitted]

SECOND MOTION TO AMEND BILL OF EXCEPTIONS—
Filed May 18, 1964To the Honorable Chief Justice and the Honorable Justices
of the Supreme Court of Georgia:

Comes now the plaintiffs-in-error, Rev. E. S. Evans, et al. in the above-styled case which is before this Honorable Court by virtue of being an equity action from the Superior Court of Bibb County, who with leave of Court, and pursuant to Georgia Code Annotated, Sections 6-913, 6-1309, 6-1401, and 81-1301, amend page one (1) of their bill of exceptions by striking the designation of plaintiffs-in-error and defendants-in-error, respectively, and substituting therefor the following:

Rev. E. S. Evans, Louis H. Wynn, Rev. J. L. Key,
Rev. Booker W. Chambers, William Randall, and
Rev. Van J. Malone, Plaintiffs-in-error,

—vs.—

The City of Macon; A. O. B. Sparks, Willis B. Sparks, Jr., Virginia Lamar Sparks, M. Barton Sparks, Heirs at law of A. O. Bacon; Guyton Adley, J. D. Crump, J. J. Denmark, Dr. W. G. Lee, Successor Trustees under the Will of A. O. Bacon; Charles [fol. 111] Newton, Mrs. T. J. Stewart, Frank M. Willingham, Mrs. Francis K. Hall, George P. Rankin, Jr., Mrs. Frederic W. Williams, and Mrs. Kenneth Dunwoody, Members of the Board of Managers under will of A. O. Bacon; Hugh M. Comer, Lawton Miller, and B. L. Register, Successor Trustees in lieu of the City of Macon, Defendants-in-error.

Wherefore, plaintiffs-in-error pray that this their amendment be allowed.

D. L. Hollowell, William H. Alexander, Attorneys for
Plaintiffs-in-Error.

[fol. 112] Certificate of Service (omitted in printing).

[fol. 113]

ORDER

The foregoing Amendment having been read and considered, the same is allowed and ordered filed.

....., Justice, Supreme Court of
Georgia.

[fol. 114] [File endorsement omitted]

[fol. 115]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

Docket No. 22534

[Title omitted]

MOTION OF CHARLES E. NEWTON, ET AL. TO SUBSTITUTE
PARTIES DEFENDANT-IN-ERROR—Filed May 27, 1964

To the Honorable Chief Justice and the Honorable Justices
of the Supreme Court of Georgia:

Come now the defendants-in-error, Charles E. Newton, Mrs. T. J. Stewart, Frank M. Willingham, Mrs. Francis K. Hall, George P. Rankin, Jr., Mrs. Frederick W. Williams and Mrs. Kenneth W. Dunwody and for reasons which will hereinafter appear, pray that this Honorable Court substitute as parties defendant-in-error in place of Charles E. Newton, Mrs. T. J. Stewart, Mrs. Frederick W. Williams and Mrs. Kenneth W. Dunwody the four following named residents of Macon, Bibb County, Georgia:

A. M. Anderson
 Mrs. Dan O'Callaghan
 Mrs. R. A. McCord, Jr.
 Mrs. W. E. Pendleton, Jr.

In support of this motion the movants respectfully show to this Court the following facts. After the Trial Court entered its order on March 10, 1964, appointing Hugh Comer, Lawton Miller and B. L. Register as Trustees of Baconsfield, movants herein tendered to these three new Trustees their resignations as members of the Board of Managers of Baconsfield. This joint resignation was sub-[fol. 116] mitted to the Trustees on March 18, 1964.

Thereafter, on May 21, 1964, at a time when the record from the Trial Court had already been docketed in the Supreme Court of Georgia, a meeting was held at which the above named three Trustees formally accepted the resignations previously tendered to them and appointed a new Board of Managers to consist of the following persons:

A. M. Anderson
 Mrs. Francis K. Hall
 Mrs. R. A. McCord, Jr.
 Mrs. Dan O'Callaghan
 Mrs. W. E. Pendleton, Jr.
 George P. Rankin, Jr.
 Frank M. Willingham

These seven appointees thereupon accepted their appointments in writing.

A copy of the resignation of the members of the former Board of Managers is attached hereto as Exhibit "A". The acceptance of this resignation and the appointment of a new Board by the three Trustees and the acceptance of this appointment by the new Board of Managers is attached hereto as Exhibit "B". Movants hereby incorporate these two exhibits by reference.

Four of the seven positions on the Board of Managers are now filled by persons who did not serve on the Board as it was constituted at the time this case was docketed in

the Supreme Court of Georgia, and who have never served on the Board before.

Wherefore, movants pray that A. M. Anderson, Mrs. R. A. McCord, Jr., Mrs. Dan O'Callaghan and Mrs. W. E. [fol. 117] Pendleton, Jr. may be made parties defendant-in-error and that Charles E. Newton, Mrs. T. J. Stewart, Mrs. Frederick W. Williams and Mrs. Kenneth W. Dunwody may be stricken as parties defendant-in-error.

Jones, Sparks, Benton & Cork, Attorneys for Defendants-in-Error, Board of Managers of Baconsfield.

Address of Counsel:

1007 Persons Building, Macon, Georgia, SHERWOOD 5-2821.

[fol. 118]

GEORGIA, BIBB COUNTY.

**ACKNOWLEDGMENT OF SERVICE, WAIVER AND CONSENT
BY NEW BOARD MEMBERS**

Come now A. M. Anderson, Mrs. Dan O'Callaghan, Mrs. R. A. McCord, Jr., and Mrs. W. E. Pendleton, Jr., and ask that they may be substituted as parties defendant in error in accordance with the attached motion of Charles E. Newton, et al., acknowledge service of the bill of exceptions, waive all further service and notice and consent that the case may proceed.

This 21st day of May, 1964.

A. M. Anderson, Mrs. Dan O'Callaghan, Mrs. R. A. McCord, Jr., Mrs. W. E. Pendleton, Jr.

[fol. 119]

EXHIBIT "A" TO MOTION TO SUBSTITUTE PARTIES
DEFENDANT IN ERROR

GEORGIA, BIBB COUNTY.

RESIGNATION OF BOARD OF MANAGERS OF BACONSFIELD

Come now Charles E. Newton, Mrs. T. J. Stewart, Frank M. Willingham, Mrs. Francis K. Hall, George P. Rankin, Jr., Mrs. Frederick W. Williams and Mrs. Kenneth W. Dunwody, all of said State and County, in their respective capacities as members of the Board of Managers of Baconsfield and pursuant to the order of Honorable O. L. Long, Judge Superior Courts, Macon Circuit, dated March 10, 1964, the resignation of The City of Macon as Trustees under Items IX and X of the Last Will and Testament of Augustus Octavius Bacon, deceased, having been accepted; and three (3) individual Trustees having been appointed by the said Superior Court to serve in lieu of The City of Macon in said capacity, the undersigned do hereby tender to said Trustees their respective resignations as members of said Board of Managers of Baconsfield.

This 18th day of March, 1964.

/s/ CHARLES E. NEWTON, JR.

/s/ MRS. T. J. STEWART

/s/ FRANK M. WILLINGHAM

/s/ MRS. FRANCIS K. HALL

/s/ GEORGE P. RANKIN, JR.

/s/ MRS. FREDERICK W. WILLIAMS

/s/ MRS. KENNETH W. DUNWODY

[fol. 120]

EXHIBIT "B" TO MOTION TO SUBSTITUTE PARTIES
DEFENDANT IN ERROR

GEORGIA, BIBB COUNTY.

ACCEPTANCE OF RESIGNATION OF BOARD OF MANAGERS

Come now Hugh M. Comer, Lawton Miller and B. L. Register and after due consideration formally accept the resignation of Charles E. Newton, Frank M. Willingham, George P. Rankin, Jr., Mrs. Francis K. Hall, Mrs. T. J. Stewart, Mrs. Frederick W. Williams, and Mrs. Kenneth W. Dunwody from the Board of Managers of Baconsfield, such resignation being dated March 18, 1964.

This the 21st day of May, 1964.

/s/ HUGH M. COMER
Hugh M. Comer

/s/ LAWTON MILLER
Lawton Miller

/s/ B. L. REGISTER
B. L. Register

APPOINTMENT OF NEW BOARD OF MANAGERS

Further, we, the said Hugh M. Comer, Lawton Miller and B. L. Register hereby appoint to the Board of Managers of Baconsfield for terms of office to begin immediately, the following persons: A. M. Anderson, Mrs. Francis K. Hall, Mrs. R. A. McCord, Jr., Mrs. Dan O'Callaghan, Mrs. W. E. Pendleton, Jr., George P. Rankin, Jr., and Frank M. Willingham.

This the 21st day of May, 1964.

/s/ HUGH M. COMER
Hugh M. Comer

/s/ LAWTON MILLER
Lawton Miller

/s/ B. L. REGISTER
B. L. Register

[fol. 121]

ACCEPTANCE OF APPOINTMENT BY NEW BOARD

Come now A. M. Anderson, Mrs. Francis K. Hall, Mrs. R. A. McCord, Jr., Mrs. Dan O'Callaghan, Mrs. W. E. Pendleton, Jr., George P. Rankin, Jr., and Frank M. Willingham and accept appointment to the Board of Managers of Baconsfield for terms to begin immediately.

This the 21st day of May, 1964.

/s/ A. M. ANDERSON
A. M. Anderson

/s/ MRS. FRANCIS K. HALL
Mrs. Francis K. Hall

/s/ MRS. R. A. MCCORD, JR.
Mrs. R. A. McCord, Jr.

/s/ MRS. DAN O'CALLAGHAN
Mrs. Dan O'Callaghan

/s/ MRS. W. E. PENDLETON, JR.
Mrs. W. E. Pendleton, Jr.

/s/ GEORGE P. RANKIN, JR.
George P. Rankin, Jr.

/s/ FRANK M. WILLINGHAM
Frank M. Willingham

[fol. 122]

ORDER GRANTING MOTION TO SUBSTITUTE PARTIES
DEFENDANT, ETC.—June 6, 1964

The within motion having been presented to this Court and it being made to appear that A. M. Anderson, Mrs. Dan O'Callaghan, Mrs. R. A. McCord, Jr. and Mrs. W. E. Pendleton, Jr. have consented to be made parties defendant in error and have acknowledged service of the bill of exceptions and have waived all further service and notice and have consented that the case may proceed:

Wherefore, It Is Hereby Ordered and Adjudged that A. M. Anderson, Mrs. Dan O'Callaghan, Mrs. R. A. McCord, Jr. and Mrs. W. E. Pendleton, Jr. are made additional

parties defendant in error and that Charles E. Newton, Mrs. T. J. Stewart, Mrs. Frederick W. Williams and Mrs. Kenneth W. Dunwody are hereby stricken as parties defendant in error.

This the 6th day of June, 1964.

-----, Presiding Justice, Supreme
Court of Georgia.

[fol. 123]

Certificate of Service

Georgia, Bibb County.

I, Willis B. Sparks, III, of counsel of record for the defendants-in-error, the Members of the Board of Managers of Baconsfield, certify that I have served the foregoing motion and accompanying two exhibits and acknowledgment of service and waiver by the four new Board members and order upon the plaintiffs-in-error by mailing a copy of the same to their attorney of record, Donald L. Hollowell, at his office at 859½ Hunter Street, Northwest, Atlanta, Georgia.

I further certify that I have mailed a copy of all the above described documents to Mr. Jack Greenberg, 10 Columbus Circle, New York, New York, Mr. Greenberg appearing on the brief of the plaintiffs-in-error as co-counsel in the case.

I further certify that I have served the defendant-in-error, City of Macon, by mailing a copy of the said motion and the said two accompanying exhibits and the said acknowledgment of service and waiver by the four new Board members and order to its attorney of record, Trammell F. Shi, at his office in the Southern United Building in Macon, Georgia.

I acknowledge service on behalf of Guyton Abney, et al., as Successor Trustees under the Will of A. O. Bacon and I further acknowledge service for W. B. Sparks, Jr., et al., as the "Sparks heirs" of A. O. Bacon.

This the 26th day of May, 1964.

Willis B. Sparks, 3rd.

[fol. 124]

[File endorsement omitted]

[fol. 125]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

Docket No. 22534

REV. E. S. EVANS, LOUIS H. WYNN, REV. J. L. KEY, REV.
BOOKER W. CHAMBERS, WILLIAM RANDALL, and REV. VAN
J. MALONE, Plaintiffs-in-Error,

VS.

THE CITY OF MACON: A. O. B. SPARKS, JR., VIRGINIA LAMAR
SPARKS, M. BARTON SPARKS, Heirs at Law of A. O.
BACON; GUYTON ADLEY, J. D. CRUMP, J. J. DENMARK,
DR. W. G. LEE, Successor Trustees under the Will of
A. O. BACON; CHARLES NEWTON, MRS. T. J. STEWART,
FRANK M. WILLINGHAM, MRS. FRANCIS K. HALL, GEORGE
P. RANKIN, JR., MRS. FREDERICK W. WILLIAMS, and MRS.
KENNETH DUNWOODY, Members of the Board of Man-
agers under Will of A. O. BACON; HUGH M. COMER,
LAWTON MILLER, and B. L. REGISTER, Successor Trustees
in Lieu of The City of Macon, Defendants-in-Error.

MOTION TO ADD PARTIES DEFENDANT-IN-ERROR AND TO DENY
DEFENDANTS-IN-ERROR'S MOTION TO SUBSTITUTE PARTIES
DEFENDANT-IN-ERROR—Filed June 4, 1964

To the Honorable Chief Justice and the Honorable Justice
of the Supreme Court of Georgia:

Come now the plaintiffs-in-error, Rev. E. S. Evans,
Louis H. Wynn, Rev. J. L. Key, Rev. Booker W. Chambers,
William Randall, and Rev. Van J. Malone in the above-
styled case and pray that this Honorable Court add the fol-
lowing named persons as defendants-in-error: A. M. Ander-
son, Mrs. Dan O'Callaghan, Mrs. R. A. McCord, Jr., and
Mrs. W. E. Pendleton, Jr., and deny the defendants-in-
error's motion to substitute these named defendants-in-
error in lieu of defendants-in-error Charles E. Newton,
Mrs. T. J. Stewart, Frank M. Willingham, Mrs. Francis K.
Hall, for the following reasons:

[fol. 126] The said motion filed in this Honorable Court by defendants-in-error Charles E. Newton, Mrs. T. J. Stewart, Frank M. Willingham, Mrs. Francis K. Hall, George P. Rankin, Jr., Mrs. Frederick W. Williams and Mrs. Kenneth W. Dunwoody shows that they submitted their resignations as members of the Board of Managers of Baconsfield. This joint resignation was submitted to Hugh Comer, Lawton Miller, and B. L. Register, new trustees of Baconsfield, on March 18, 1964. The said resignations were accepted by the said Trustees on May 21, 1964. However, the appeal of this case to this Honorable Court by the plaintiffs-in-error was docketed in this Honorable Court on May 8, 1964. The said new trustees, having been notified that the appeal was docketed, had no authority to accept the resignation of the named defendants-in-error or to take any other action affecting the status of the parties or property involved in this case, pending a determination of the issues involved in this case by this Honorable Court. Therefore, plaintiffs-in-error submit that the attempted resignation by the named defendants-in-error was null and void.

Wherefore, plaintiffs-in-error pray that:

(1) A. M. Anderson, Mrs. R. A. McCord, Jr., Mrs. Dan O'Callaghan, and Mrs. W. E. Pendleton, Jr., be made parties defendants-in-error; and

(2) The defendants-in-error's prayer that Charles E. Newton, Mrs. T. J. Stewart, Mrs. Frederick W. Williams, and Mrs. Kenneth W. Dunwoody be stricken as parties defendant-in-error, be denied.

Donald L. Hollowell, William H. Alexander, 859½
Hunter Street, Northwest, Atlanta, Georgia.

Jack Greenberg, James M. Nabrit, III, 10 Columbus
Circle, New York, New York 10019, Attorneys for
Plaintiffs-in-Error.

[fol. 127] Certificate of Service (omitted in printing).

[fol. 128]

ORDER

The foregoing motion having been read and considered, the same is allowed and ordered filed.

Wherefore, it is ordered and adjudged that A. M. Anderson, Mrs. Dan O'Callaghan, Mrs. R. A. McCord, Jr., and Mrs. W. E. Pendleton, Jr. are made parties defendant-in-error. Further, the motion of the defendants-in-error to strike Charles E. Newton, Mrs. T. J. Stewart, Mrs. Frederick W. Williams, and Mrs. Kenneth W. Dunwoody, referred to in this motion, is denied.

This the day of June, 1964.

----- Justice, Supreme Court of
Georgia.

[fol. 129]

[File endorsement omitted]

[fol. 130]

IN THE SUPREME COURT OF THE STATE OF GEORGIA
Docket No. 22534

E. S. EVANS et al.,

v.

CHARLES E. NEWTON et al.

ORDER GRANTING SECOND MOTION TO AMEND THE
BILL OF EXCEPTIONS, ETC.—September 25, 1964

Upon consideration of the second motion to amend the bill of exceptions by E. S. Evans et al., the designated plaintiffs in error in this case, filed in the Supreme Court on May 18, 1964, so as to substitute the plaintiffs in error designated in the said motion for those designated in the bill of exceptions and to substitute the defendants in error designated in the said motion for those designated in the

bill of exceptions, it is ordered that the said motion be hereby granted.

Let a copy of this order be mailed to counsel for each side.

[fol. 131]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

Docket No. 22534

E. S. EVANS et al.,

v.

CHARLES E. NEWTON et al.

ORDER GRANTING MOTION BY CHARLES E. NEWTON ET AL.,
DEFENDANTS IN ERROR, ETC.—September 28, 1964

Upon consideration of the motion by Charles E. Newton et al., defendants in error in this case, to make A. M. Anderson, Mrs. R. A. McCord, Mrs. Dan O'Callahan and Mrs. W. E. Pendleton, Jr., parties defendant in error and to strike Charles E. Newton, Mrs. T. J. Stewart, Mrs. Frederick W. Williams and Mrs. Kenneth W. Dunwoody as parties defendant in error, it is ordered that the said motion be granted in so far as it names additional parties defendant in error and is denied in so far as it seeks to strike parties defendant in error.

Let a certified copy of this order be mailed to counsel for each side.

[fol. 132]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

Docket No. 22534

EVANS et al.,

v.

NEWTON et al.

The record does not support the contentions of the plaintiffs in error, and the judge could not properly have gone beyond the judgment rendered. The judgment is not shown to be erroneous for any of the reasons urged by counsel for the plaintiffs in error.

- Argued June 8, 1964

Decided September 28, 1964

Rehearing denied October 8, 1964.

Equitable petition. Bibb Superior Court. Before Judge Long.

[fol. 133]

OPINION—September 28, 1964

The will of A. O. Bacon (which was probated in solemn form) in Item Nine gave in trust described property, to be known as "Baconsfield," to named trustees for the benefit of his wife and two named daughters for their joint use, benefit, and enjoyment during the term of their natural lives. It was provided that upon the death of the last survivor, the property, including all remainders and reversions, "shall thereupon vest in and belong to the Mayor and Council of the City of Macon, and to their successors forever, in trust for the sole, perpetual and unending, use, benefit and enjoyment of the white women, white girls, white boys and white children of the City of Macon to be by them forever

used and enjoyed as a park and pleasure ground, subject to the restrictions, government, management, rules and control" of a board of managers consisting of seven persons, not less than four to be white women and all seven to be white persons. In order to provide for the maintenance of the park, income from described real property and bonds was to be expended by the board of managers.

Charles E. Newton and others, as members of the Board [fol. 134] of Managers of Baconsfield, brought an equitable petition against the City of Macon (in its capacity as trustee under Item Nine of the will of A. O. Bacon), and Guyton G. Abney and others, as successor trustees under the will holding assets for the benefit of certain residuary beneficiaries. It was alleged: The city as trustee holds the legal title to a tract of land in Macon, Bibb County, known as Baconsfield, under Item Nine of the will of A. O. Bacon. As directed in the will, the board through the years has confined the exclusive use of Baconsfield to those persons designated in the will. The city is now failing and refusing to enforce the provisions of the will with respect to the exclusive use of Baconsfield. Such conduct on the part of the city constitutes such a violation of trust as to require its removal as trustee. It was prayed that: the city be removed as a trustee under the will; the court enter a decree appointing one or more freeholders, residents of the city, to serve as trustee or trustees under the will; legal title to Baconsfield and any other assets held by the city as trustee be decreed to be in the trustee or trustees so appointed [fol. 135] for the uses originally declared by the testator; and for further relief.

The City of Macon filed its answer asserting that it can not legally enforce racial segregation of the property known as Baconsfield, and therefore it is unable to comply with the specific intention of the testator with regard to maintaining the property for the exclusive use, benefit, and enjoyment of the white women, white girls, white boys, and white children of the city. The city prayed that the court construe the will and enter a decree setting forth the duties and obligations of the city in the premises. The other

defendants admitted the allegations of the petition and prayed that the city be removed as a trustee. The petitioners thereafter filed a motion for summary judgment.

Reverend E. S. Evans and others, alleging themselves to be Negro residents of the City of Macon, on behalf of themselves and other Negroes similarly situated, filed an intervention in the cause and asserted: The restriction and limitation reserving the use and enjoyment of Baconsfield [fol. 136] Park to "white women, white girls, white boys and white children of the City of Macon," is violative of the public policy of the United States of America and violative of the Constitution and laws of the State of Georgia. The court as an agency of the State of Georgia can not, consistently with the equal protection clause of the Fourteenth Amendment of the Constitution of the United States and the equivalent provision of the Constitution of the State of Georgia, enter an order appointing private citizens as trustees for the manifest purpose of operating, managing, and regulating public property (which passed to the City of Macon under charitable trust created by will) in a racially discriminatory manner. Although the charitable device at the time of its creation was capable of being executed in the exact manner provided by the will, by operation of law it is no longer capable of further execution in the exact manner provided for by the testator. The court should effectuate the general charitable purpose of the testator to establish and endow a public park by refusing to appoint private persons as trustees.

By amendment to the petition it was alleged: By the [fol. 137] will of A. O. Bacon a trust was established for his heirs. The trust has been executed as to four of his seven heirs now living, A. O. B. Sparks, Willis B. Sparks, Jr., Virginia Lamar Sparks, and M. Garten Sparks. The interests of three remaining heirs, Louise Curry Williams, Shirley Curry Cheatham, and Manley Lamar Curry, are still held under an executed trust by four trustees holding under the authority of the will, these trustees being Guyton Abney, J. D. Crump, T. I. Denmark, and Dr. W. G. Lee. These seven persons have an interest in the litigation since,

if the trust purpose expressed in the will with respect to the designation of persons who may use Baconsfield should fail, the property comprising Baconsfield, together with the property providing the upkeep of Baconsfield, will revert to the estate of A. O. Bacon and be distributed to these heirs. The amendment prayed that the Sparks heirs be allowed to intervene and that the trustees be allowed to assert the interests of the other heirs. It was also prayed that the Negro intervenors and other members of the Negro race resident in Macon be permanently enjoined from entering [fol. 138] and using the facilities of Baconsfield. The Sparks heirs and the trustees of the other heirs of A. O. Bacon filed an intervention praying that the relief sought by the original petitioners be granted, but that if such relief not be granted, the property revert to them.

The City of Macon filed an amendment to its answer, alleging that pursuant to resolution adopted by the Mayor and Council of the city at its regular meeting on February 4, 1964, the city has resigned as trustee under the will of A. O. Bacon. It prayed that the resignation be accepted by the court.

The Negro intervenors filed an amendment to their intervention in which they asserted: The equal protection clause of the Fourteenth Amendment to the United States Constitution prohibits the court from enjoining Negroes from the use of the park, and from accepting the resignation of the City of Macon as trustee and appointing new trustees for the purpose of enjoining (enforcing?) the racially discriminatory provision in the will of A. O. Bacon. Code § 69-504 prescribes racial discrimination and is therefore [fol. 139] violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution. Since the racially discriminatory provision in the will was dictated by that unconstitutional statute, enforcement of the racially discriminatory provision is constitutionally prohibited. Code § 108-202, properly construed, requires that the racially discriminatory provision in the will be declared null and void. The intervenors prayed that the court withhold approval of the attempted resignation of the city as

trustee under the will, direct the city to continue to administer the park on a racially nondiscriminatory basis, and deny the injunction sought by the petitioners to exclude Negroes from the use of the park.

On March 10, 1964, the judge of the superior court entered an order and decree in the case which adjudged as follows: (1) The intervenors named are proper parties in the case and are proper representatives of the class which their intervention states that they represent, the Negro citizens of Bibb County and the City of Macon. (2) The defendants, Guyton G. Abney, J. D. Crump, T. I. Denmark, [fol. 140] and Dr. W. G. Lee, as successor trustees under the will of A. O. Bacon, and intervenors A. O. B. Sparks, Willis B. Sparks, Jr., Virginia Lamar Sparks and M. Garten Sparks are also proper parties. (3) The City of Macon having submitted its resignation as the trustee of the property known as Baconsfield, the resignation is accepted by the court. (4) Hugh M. Comer, Lawton Miller, and B. L. Register are appointed as trustees to serve in lieu of the City of Macon. (5) The court retains jurisdiction for the purpose of appointing other trustees that may be necessary in the future. (6) It is unnecessary to pass upon the secondary contention of the intervenors Guyton G. Abney and others.

Reverend E. S. Evans and others in their writ of error to this court assign error on this order of the trial judge. Their contentions will appear from the opinion.

Donald L. Hollowell, William H. Alexander, Jack Greenberg, James M. Nabrit, III, for plaintiff in error.

Jones, Sparks, Benton & Cork, Trammell F. Shi, contra.

[fol. 141] ALMAND, Justice. Counsel for the plaintiffs in error (the Negro intervenors) assert that the decree of the judge of the superior court was "patent enforcement of racial discrimination contrary to the equal protection clause of the Fourteenth Amendment" to the Federal Constitution. The decree did not enforce, or purport to enforce, any judgment, ruling, or decree as related to the intervenors. After determining that all parties were properly before the court, the decree did two things: (1) Accepted the resignation of

the City of Macon as trustee of Baconsfield; and (2) appointed new trustees.

"The law of charities is fully adopted in Georgia . . . " *Jones v. Habersham*, 107 U.S. 174 (5) (2 SC 336, 27 LE 401). Under the law of this State any person may, by will, grant, gift, deed, or other instrument, give or devise property for any charitable purpose. Ga. L. 1937, p. 593 (Code Ann. § 108-207). Any public convenience might be a proper subject for a charitable trust. Code § 108-203. A charity once established is always subject to supervision and direction by a court of equity to render effectual its purpose. Code § 108-204. It is the rule that a charitable trust shall never fail for the want of a trustee. Code § 108-302.

Whether the will of A. O. Bacon, establishing a trust [fol. 142] for the operation of Baconsfield, contemplated by the language, "to the Mayor and Council of the City of Macon and to *their* successors" (italics ours), that the named trustee might resign, need not be determined. The City of Macon did resign, and the judge of the superior court was confronted with the commandment of Code § 108-302 that a trust shall never fail for the want of a trustee. Being empowered to appoint trustees when a vacancy occurs for any cause, *Thompson v. Hale*, 123 Ga. 305 (51 SE 383), *Harris v. Brown*, 124 Ga. 310 (2) (52 SE 610, 2 LRA (NS) 828), *Woodbery v. Atlas Realty Co.*, 148 Ga. 712 (98 SE 472), *Sparks v. Ridley*, 150 Ga. 210 (3) (103 SE 425), the judge exercised such power and appointed successor trustees.

The contention by counsel for the plaintiffs in error that Code § 69-504 required A. O. Bacon to limit the use of Baconsfield to the members of one race can not be sustained. Code § 69-504, in providing for gifts limited to members of a race, simply states that any person *may* "devise, give, etc." The law of Georgia does not by Code § 69-504, nor by any other statutory provision, require that any testator shall limit his beneficence to any particular race, class, color, or creed. Such limitation, however, standing alone, is not invalid, and this court has sustained a testamentary charity naming trustees for establishing and maintaining "a home for indigent colored people 60

years of age or older residing in Augusta, Georgia." *Strother v. Kennedy*, 218 Ga. 180 (127 SE2d 19). A. O. Bacon had the absolute right to give and bequeath property to a limited class.

Counsel for the plaintiffs in error assert that: "As the City was unable to comply with the racially discriminatory direction of the trust, three alternatives were open to the lower court: (1) declare the racially discriminatory provision null and void; (2) remove the trustee (or accept its resignation) and appoint a non-governmental trustee; (3) declare failure of the trust." They insist that the judge should have chosen the first alternative.

Counsel for plaintiffs in error assert that the court should have applied the provisions of Code § 108-202 that when a valid charitable bequest is incapable for some reason of exact execution in the exact manner provided by the testator a court of equity will carry it into effect in such way as nearly as possible to effectuate his intention. The answer to this contention is: the application of the cy-pres rule, as provided in this Code section, was not invoked [fol. 144] by the primary parties to this case, and even if it be conceded (which we do not concede, see *Smith v. Manning*, 155 Ga. 209, 116 SE 813, and *Fountain v. Bryan*, 176 Ga. 31, 166 SE 766) that the intervenors could raise such issue, the facts before the trial judge were wholly insufficient to invoke a ruling that the charitable bequest was or was not incapable for some reason of exact execution in the exact manner provided by the testator. There is no testimony in the record of any nature or character, that the board of managers provided by the will, can not operate the park pursuant to the terms and conditions of the will.

Counsel for the plaintiffs in error cite *Pennsylvania v. Board of Directors of City Trusts of the City of Philadelphia*, 353 U.S. 230 (77 SC 806, 1 LE2d 792). In the *Pennsylvania* case the United States Supreme Court pointed out that the board which operated Girard College was an agency of the State of Pennsylvania by legislative act, and that the refusal to admit Negroes to Girard College was therefore discrimination by the State. Upon the return of

the case to the Supreme Court of Pennsylvania for further proceedings not inconsistent with the opinion, that court remanded the case to the Orphans' Court for further proceedings not inconsistent with the opinion of the Supreme Court of the United States. The Supreme Court of Pennsylvania, on the second appearance of the case (see *Girard College Trusteeship*, 391 Pa. 434, 138 A2d 844), stated that the Orphans' Court construed the United States Supreme Court's opinion to mean that the Board of City Trustees was constitutionally incapable of administering Girard College in accordance with the testamentary requirements of the founder, and the Orphans' Court entered a decree removing the Board as trustee of Girard College and substituting therefor thirteen private citizens, none of whom held any public office or otherwise exercised any governmental power under the Commonwealth of Pennsylvania. The Supreme Court of Pennsylvania affirmed this action on review, and again sustained action denying admission to Girard College by the Negro applicants. Counsel for the defendants in error cite *Girard College Trusteeship*, 391 Pa. 434, and strongly rely on this Pennsylvania case. (On review by the United States Supreme Court the motion to dismiss was granted, and treating the record as a petition for certiorari, certiorari was denied. *Pennsylvania v. Board of Directors of City Trusts of Pennsylvania*, 357 U.S. 570 (78 SC 1383, 2 LE2d 1546). A motion for rehearing was denied. (358 U.S. 858.) In so far as the *Girard College Trusteeship* case is applicable on its facts to the present case, it supports the rulings we have made.

The record does not sustain the contentions of the plaintiffs in error, and the judge could not properly have gone beyond the judgment rendered. This judgment is not shown to be erroneous for any of the reasons urged by counsel for the plaintiffs in error.

Judgment affirmed. All the Justices concur.

[fol. 147]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

E. S. EVANS et al.,

v.

CHARLES E. NEWTON et al.

JUDGMENT—September 28, 1964

This case came before this court upon a writ of error from the Superior Court of Bibb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

[fol. 148]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

Decided September 28, 1964

Docket No. 22534

REV. E. S. EVANS, LOUIS H. WYNN, REV. J. L. KEY, REV. BOOKER W. CHAMBERS, WILLIAM RANDALL, and REV. VAN J. MALONE, Plaintiffs-in-Error,

vs.

THE CITY OF MACON; A. O. B. SPARKS, JR., VIRGINIA LAMAR SPARKS, M. BARTON SPARKS, Heirs at Law of A. O. BACON; GUYTON ADLEY, J. D. CRUMP, J. J. DENMARK, DR. W. G. LEE, Successor Trustees under the Will of A. O. BACON; CHARLES NEWTON, MRS. T. J. STEWART, FRANK M. WILLINGHAM, MRS. FRANCIS K. HALL, GEORGE P. RANKIN, JR., MRS. FREDERIC W. WILLIAMS, and MRS. KENNETH DUNWOODY, Members of the Board of Managers under Will of A. O. BACON; HUGH M. COMER, LAWTON MILLER, and B. L. REGISTER, Successor Trustees in Lieu of The City of Macon, Defendants-in-Error.

No change. Denied. All the Justices concur.

MOTION FOR REHEARING—Filed October 5, 1964

Comes now Rev. E. S. Evans, Louis H. Wynn, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall, and Rev. Van J. Malone, plaintiffs-in-error, and within the time allowed by law, file this their Motion for Rehearing in the above-stated case, and for grounds thereof, say:

1.

That plaintiffs-in-error believe that this Honorable Court has overlooked the following material fact in the record: Item 9th of the will of A. O. Bacon provides, *inter alia*, that certain property should be left in trust to the "Mayor and Council of the city of Macon, and to their successors". The said item also provides that "The Members of this Board [of Managers] shall first be selected and appointed by the Mayor and Council of the city of Macon, or by their [fol. 149] successors . . . ; and all vacancies on said Board shall be filled by appointments made by the Mayor and Council of the City of Macon . . . , upon nomination made by the Board of Managers and approved by the said Mayor and Council of the City of Macon or their successors." Plaintiffs-in-error aver that the phrase "their successors" as used *supra* in the relevant context makes it quite clear that the successors referred to are the persons occupying the positions of Mayor and councilman of the city of Macon and not persons who have no official position or office with the City of Macon. A reading of the will in its entirety makes it clear to plaintiffs-in-error that it was the testator's intent that the Mayor and Council (or persons succeeding them in those positions) should remain as trustees under the will. Accordingly, the Bibb Superior Court did not effectuate the testator's intent by allowing the City of Macon to resign and was in error in so doing.

2.

That while the language in Georgia Code Annotated Section 69-504 appears to be permissive, the testator was in fact required to limit his beneficence to members of a

particular race. This requirement was the results of the said Code section plus the customs which prevailed at the time the testator's will was drawn. The said Code section cannot be read or properly understood unless done so with a realization that patterns of segregation which were fostered and perpetuated by the State, existed at the time the will was drawn. The plaintiffs-in-error respectfully refer this court to *Robinson v. Florida*, 84 S. Ct. 1693 (1964). In *Robinson*, the State statute did not require restaurants to segregate Negroes and whites. Nevertheless, the Court held that Florida, as did Georgia in the instant case, became involved to such a significant extent that the case must be held to reflect State policy requiring segregation contrary to the Fourteenth Amendment to the United States [fol. 150] Constitution. In reality, the use of precatory words in Section 69-504 does not mean that the testator had a choice in the instant case anymore than the restaurants did in the *Robinson* case.

Wherefore, movants pray that a rehearing be granted in this case and that the judgment of the court below be reversed.

Donald L. Hollowell, William H. Alexander, 859½
Hunter Street, N. W., Atlanta, Georgia 30314;

Jack Greenberg, James M. Nabritt III, 10 Columbus
Circle, New York, New York 10019;

Attorneys for Plaintiffs-in-Error.

[fol. 151]

CERTIFICATE OF PROBABLE CAUSE FOR REHEARING

I, William H. Alexander, of counsel for plaintiffs-in-error in the foregoing case, do certify that, upon careful examination of the opinion of the Court in this case, I verily believe that the facts and the decision mentioned in the attached motion have been overlooked by the Court, which facts and decision are material, and, if considered would require a different judgment from that rendered.

I also certify that a copy of the foregoing motion for rehearing has been served upon opposing counsel of record,

Trammel F. Shi and Jones, Sparks, Benton and Cork, by placing a copy in the United States Mail, postage prepaid, addressed to said counsel at their address of record.

This 5th day of October, 1964.

William H. Alexander

Sworn to and subscribed before me this 5 day of October, 1964.

Mary E. Dobbs, Notary Public, Georgia State at Large.
My Commission Expires June 22, 1968.

[fol. 152]

[File endorsement omitted]

[fol. 153]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

22534

E. S. EVANS *et al.*,

v.

CHARLES E. NEWTON *et al.*

ORDER DENYING MOTION FOR REHEARING—October 8, 1964

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

[fol. 154] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 155]

SUPREME COURT OF THE UNITED STATES

No., October Term, 1964

E. S. EVANS, et al., Petitioners,

vs.

CHARLES E. NEWTON, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
CERTIORARI—December 22, 1964

Upon Consideration of the application of counsel for
petitioner(s),

It Is Ordered that the time for filing a petition for writ
of certiorari in the above-entitled cause be, and the same
is hereby, extended to and including March 5, 1965.

Potter Stewart, Associate Justice of the Supreme
Court of the United States.

Dated this 22nd day of December, 1964.

[fol. 156]

SUPREME COURT OF THE UNITED STATES

No. 959—October Term, 1964

E. S. EVANS, et al., Petitioners,


v.

CHARLES E. NEWTON, et al.

ORDER ALLOWING CERTIORARI—April 26, 1965

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



[131]

IN THE SUPREME COURT OF GEORGIA

22534

Decided March 14, 1968

 EVANS et al. v. NEWTON et al.

OPINION OF SUPREME COURT OF GEORGIA

—Filed March 31, 1966

The judgment of this Court of September 28, 1964, in the case of Evans et al. v. Newton et al., having been reversed by the Supreme Court of the United States on January 17, 1966, the judgment of this Court is vacated and the trial court directed to pass on the contentions of the parties not passed on previously, and the judgment of the United States Supreme Court of January 17, 1966, is made the judgment of this Court.

[132] ALMAND, Justice. The judgment of this Court of September 28, 1964 (Evans et al. v. Newton et al., 220 Ga. 280 (138 SE2d 573)), affirming the judgment of the Bibb Superior Court, was on January 17, 1966, reversed by the Supreme Court of the United States, — US —. In its mandate to this Court, it was ordered "that the cause be remanded to the Supreme Court of the State of Georgia for further proceedings not inconsistent with the opinion of this Court".

In response to our request, counsel for the plaintiff-in-error and counsel for the defendant-in-error, other than the City of Macon, have filed briefs as to what directions, if any, should be given on the return of this case to the trial court.

When this case was before us for review, we sustained the orders of the trial judge accepting the resignation of

the City of Macon as trustee of Baconsfield and appointing new trustees. The Supreme Court of the United States, in the general reversal of the judgment of this Court, did not, in the majority opinion, make any specific ruling on the right of the City of Macon to resign as trustee or that new trustees [133] could not be appointed. The resignation of the City of Macon as trustee of Baconsfield because of its inability to carry out the provisions of the trust being an accomplished fact (and we know of no law that could compel it to act as trustee) and the order of the court appointing new trustees having been reversed, the trust property is without a trustee. Even if new trustees were appointed, they would be compelled to operate and maintain the park as to Whites and Negroes on a non-discriminatory basis which would be contrary to and in violation of the specific purpose of the trust property as provided in the Will of Senator Bacon.


Under these circumstances, we are of the opinion that the sole purpose for which the trust was created has become impossible of accomplishment and has been terminated. (See Restatement (Second), Trusts § 335; "Where a trust is expressly created . . . [and] fail[s] from any cause, a resulting trust is implied for the benefit of the grantor, or testator, or his heirs." Ga. Code § 108-106(4).)

The trial court in its order stated that it was not at that time necessary to pass upon the secondary contentions of the trustees of Senator Bacon's estate and the intervening [134] heirs as to the failure of the purpose of the trust and its reversion to the Bacon Estate. As we view the status of the case, in light of the United States Supreme Court's decision, direction is given that the court on the return of the case determine and pass upon the contentions of the trustees of the Bacon Estate and intervening heirs and such other questions as may be properly raised by the parties.

The judgment of this Court of September 28, 1964, is vacated, and the judgment of the Supreme Court of the United States is made the judgment of this Court.

Judgment reversed with direction. All the Justices concur.

(Certificate of Service Omitted in Printing.)



[136]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

MOTION FOR SUMMARY JUDGMENT

—Filed November 10, 1966

Come now GUYTON G. ABNEY, J. D. CRUMP, T. I. DENMARK and DR. W. G. LEE as Successor Trustees under the Last Will and Testament of Augustus Octavius Bacon, deceased, hereinafter referred to at times as Senator Bacon, defendants in the above case, and represent to and move the court as follows:

1.

The final order and decree of this court of March 10, 1964, was appealed to and affirmed by the Supreme Court of Georgia on September 28, 1964, and on writ of certiorari the United States Supreme Court reversed the judgment of the Supreme Court of Georgia on January 17, 1966. Thereafter on March 14, 1966, the judgment of the United States Supreme Court was made the judgment of the Supreme Court of Georgia, reversing and vacating the prior judgment of this court. The Georgia Supreme Court remanded the case to this court for further proceedings consistent with the decision of the United States Supreme Court and specifically directed this court to pass on contentions of the parties not passed on previously. The foregoing judgment of the Supreme Court of Georgia is now the final unappealed from judgment of that court.

2.

On January 17, 1966, Bacon's trust became unenforceable and Baconsfield and the funds held for its support reverted [137] at that time into Bacon's estate by operation of law.

On March 14, 1966, the Georgia Supreme Court recognized that this had occurred saying "We are of the opinion that the sole purpose for which this trust was created has been terminated." This judgment declaring what had transpired in regard to the title is now the law of the case. It remains only for this Court at this time to give effect to said reversion of title.

3.

The estate of Senator Bacon has long since been completely administered, and his executors have been dismissed and discharged, and movants represent to the court that the persons to whom said Charitable Trust fund reverts are to be determined under the residuary provisions of Item 6th of the Will of Senator Bacon, as ~~modified~~ by the codicil to said Will, as property reverting to ~~said estate~~ on and as of January 17, 1966, the date of the failure and termination of said Charitable Trust, and that as of said date the legal title to the Charitable Trust fund reverted to movants as Successor Trustees under said Item 6th of said Will.

4.

Under Item 6th of said Will and the codicil thereto the residuum of the testator's estate was bequeathed and devised in trust to the trustees therein named, movants being the Successor Trustees under said Item 6th, and upon the death of Mrs. Virginia Lamar Bacon, the surviving widow of the testator, said trust property as it then existed was divided into two equal parts. The trust under said Item 6th will hereinafter be referred to as the Item 6th Trust.

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5.

As to one of said equal parts said Item 6th Trust is still executory for the benefit for life of Shirley Holcomb

Curry, Marie Louise Lamar Curry and Manley Lamar Bacon Curry, surviving children of Augusta Lamar Bacon Curry, deceased, and upon their deaths as provided therein, and the legal title to said one-half undivided interest in the Charitable Trust fund is in Movants as Successor Trustees as aforesaid. Said one-half equal part of the Charitable Trust fund is herein identified as the Curry share.

6.

The remaining equal share of the Charitable Trust fund is herein identified as the Sparks share. Said one-half equal share of the Item 6th Trust, the Sparks share, became fully executed upon the death of said Mary Louise Bacon Sparks predeceased by Willis B. Sparks, Sr., her husband, and said Sparks share thereupon vested in equal shares in fee simple and was conveyed in equal shares to A. O. B. Sparks, Willis B. Sparks, Jr., Virginia Lamar Sparks and M. Garten Sparks, surviving children of said Mary Louise Bacon Sparks, and as to the Sparks share of the Charitable Trust said Item 6th Trust was automatically executed upon its coming into existence by reversion to the estate of Senator Bacon, so that movants have no trust duties to perform with respect thereto.

7.

At the time of the filing of the petition in this case all of the aforesaid children of Mary Louise Bacon Sparks were in life and were sui juris, and they intervened in the case on January 8, 1964, in support of the will of Senator Bacon, but also to assert their interest by reversion in the Charitable Trust fund if the Will of Senator Bacon could not be carried [139] out. A. O. B. Sparks, one of said intervenors, subsequently departed this life on April 19, 1964, prior to the reversion of said Charitable Trust

fund, leaving a Will which is of record in the Court of Ordinary of Bibb County, Georgia. The Citizens and Southern National Bank and Willis B. Sparks, Jr., as Executors of the Will of A. O. B. Sparks, deceased, have been substituted as Intervenor in his place for the purpose of asserting such interest in the Charitable Trust fund as would have reverted to said A. O. B. Sparks rather than to his estate if he had remained in life.

8.

Movants allege that the legal and beneficial title to said Sparks share of said Charitable Trust has reverted to and has vested in equal undivided shares in said Willis B. Sparks, Jr., Virginia Lamar Sparks, M. Garten Sparks and in the estate of said A. O. B. Sparks, deceased.

9.

The City of Macon having resigned as original Trustee of the aforesaid Charitable Trust, and said original Trustee having no trust funds or properties in its hands or in its name, and having no trust duties to perform, said City of Macon is no longer a necessary party to this proceeding and should be dismissed as such without cost to it.

10.

The order of this court, appointing Hugh M. Comer, Lawton Miller and B. L. Register as Successor Trustees having been reversed, leaving the Charitable Trust without a trustee, [140] and said Successor Trustees having no trust duties to perform except to account for the legal title to the trust properties and assets and to account for any trust funds remaining in their hands, said Successor Trustees should be allowed to account for any funds in their hands, and for their acts and doings as de facto Suc-

cessor Trustees, and should be acquitted of their trust upon such accounting.

11.

The individuals heretofore appointed as the Board of Managers who are the plaintiffs herein have been acting since their appointment and are still acting under color of their office and have trust funds and assets in their hands and should be allowed to file an accounting of their acts and of the funds in their hands and should then be released and acquitted from further liability.

12.

To the extent if any that the de facto Successor Trustees or the de facto Board of Managers have incurred obligations in the conduct of this litigation or in connection with the management and operation of the properties and assets of said Charitable Trust fund an appropriate order should be entered providing for the payment thereof or, alternatively, charging the trust properties and assets with the payment thereof in the hands of the persons to whom said trust assets are distributed.

13.

One or more suitable persons, who may include all or any of the de facto Successor Trustees or de facto Board of Managers, should be appointed by this court as Receiver or Receivers to take possession and custody of the properties, assets and funds of the Charitable Trust and to protect and manage the same under the further orders and directions of this court and to transfer [141] the title thereto and possession thereof to the persons entitled to receive the same.

14.

Rev. E. S. Evans and others having intervened herein for the purpose of asserting certain rights as alleged beneficiaries of the aforesaid Charitable Trust, in their own behalves and as representatives of a designated class, and said Charitable Trust having failed of its purpose and having terminated, all relief prayed for by them should be denied.

WHEREFORE, Movants pray:

(a) That all parties to this case other than themselves be ordered to show cause at a time and place to be fixed by the court why Movants' prayers should not be granted.

(b) That summary judgment on the pleadings and mandate of the Supreme Court of Georgia be granted to Movants as herein prayed;

(c) That the Successor Trustees herein named and the Board of Managers herein referred to be allowed and directed to file an accounting of their respective acts and doings, and of the trust properties, assets and funds in their hands, and that they be hence discharged without cost to them;

(d) That the court give appropriate direction under a proper interpretation of the Last Will and Testament of Senator Bacon respecting the persons to whom the properties, assets and funds of the Charitable Trust have reverted, directing the Receiver or Receivers to be appointed by this court to effectuate such reversion in such manner as may be necessary and appropriate.

/s/ JONES, SPARKS, BENTON & CORK
Attorneys for Movants

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ORDER

The foregoing Motion for Summary Judgment read, considered and ordered filed.

All parties other than movants are ordered to show cause at 10 o'clock A.M., on the 19 day of December, 1966, why movants' prayers for summary judgment and other relief should not be granted as prayed.

This 10 day of November, 1966.

/s/ O. L. LONG
J.S.C.M.C.

FILED IN OFFICE
10th day of November, 1966

/s/ LILLIAN LAVINE
Deputy Clerk

[143]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

AMENDMENT SUBSTITUTING PARTIES

—Filed November 10, 1966

Come now Willis B. Sparks, Jr., Virginia Lamar Sparks and M. Garten Sparks, intervenors in the above stated case, and The Citizens and Southern National Bank and Willis B. Sparks, Jr., as Executors of the Last Will and Testament of A. O. B. Sparks, deceased, and respectfully show to the court:

1.

A. O. B. Sparks, one of the original intervenors in the above case, departed this life on April 19, 1964, leaving a Will which is of record in solemn form in the Court of Ordinary of Bibb County.

2.

An order of this court is desired substituting for the said A. O. B. Sparks, deceased, as one of the original intervenors, the aforesaid Executors of his Will.

/s/ JONES, SPARKS, BENTON & CORK
Attorneys

[144] The foregoing amendment read, allowed and ordered filed.

IT IS ORDERED that The Citizens and Southern National Bank and Willis B. Sparks, Jr., as Executors of the Last Will and Testament of A. O. B. Sparks, deceased, be substituted for said A. O. B. Sparks, one of the intervenors in said case.

This 10 day of November, 1966.

/s/ O. L. LONG
J.S.C.M.C.

FILED IN OFFICE
10th day of November, 1966

/s/ LILLIAN LAVINE
Deputy Clerk

[145]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

INTERROGATORIES

—Filed December 27, 1966

To: City of Macon and Trammell Shi, City Attorney

Comes now Rev. C. S. Evans, Louis H. Wynne, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall and Rev. Van J. Malone, intervenors in the above action, and for purposes of discovery requires the defendant City of Macon to answer the following interrogatories within fifteen (15) days from the date of service, as provided by law, and that a copy of the answers be furnished the intervenors' attorney, William H. Alexander.

—1—

State the names, addresses and term of office of each and every persons serving full or part-time as City Councilmen for the City of Macon, Georgia.

—2—

State whether any of the above-named councilmen claim any interest, future, present, vested, contingent or otherwise in Baconsfield Park.

—3—

With reference to Interrogatory No. 2 set forth the name of such councilman and his specific claim.

—4—

State whether during the period 1955 through 1966 inclusive there was adopted by the Macon City Council any

rule, resolution, [146] ordinance, or mandate with reference to Baconsfield Park.

—5—

With reference to Interrogatory No. 4, set forth in full any such rule, resolution, ordinance or mandate giving the date of adoption and the effective date of said rule, resolution, ordinance or mandate.

—6—

State whether during the period 1955 through 1966 inclusive, any heirs at law of Senator Bacon, or any person or persons claiming an interest in Baconsfield Park, have conveyed by deed or otherwise their interest in whole or in part to the City of Macon.

—7—

If the answer to No. 6 is "Yes", state what interest was conveyed, the names and addresses of such grantors, the date of same and the date the instrument was recorded.

—8—

State whether Baconsfield Park has at anytime housed or had on its premises a zoo, museum, menagerie, public exhibit or a building of any kind, and whether such is presently on the premises of Baconsfield Park.

—9—

With reference to No. 8, state specifically what was housed or placed on the premises of Baconsfield Park and by whom owned and maintained.

—10—

State whether the City Council of Macon, Georgia has at anytime by administrative or legislative act, resolutions or otherwise claimed Baconsfield Park for and on behalf of the City of Macon.

—11—

State whether any Federal, State or City funds have been expended for the maintenance or operation of Baconsfield Park [147] since 1950.

—12—

If the answer to Interrogatory No. 11 is "Yes", set forth the amount of Federal, State or City funds expended, indicating the years expended and what specific purpose the money was expended.

—13—

State whether the income from the trust fund left by Senator Bacon to operate and maintain Baconsfield Park has been depleted.

—14—

If the trust fund inquired of in No. 13 is not depleted, state the amount which is presently extant and the depository which holds the same.

—15—

State the annual operating and maintenance cost of Baconsfield Park for each year from January 1, to December 1, 1966 inclusive.

—16—

With reference to No. 15, state the amounts and specific purposes for which all monies were expended to maintain and operate Baconsfield Park beginning with the year 1955 ending with the present year or any part thereof.

—17—

State whether any individuals or organizations have contributed monies, items, animals, or other tangibles to the City of Macon for the maintenance, operation, beautification or for additions to Baconsfield Park.

—18—

State whether the City of Macon has at anytime sold, leased, disposed of, or alienated, any part of Baconsfield Park.

—19—

If the answer to No. 18 is "Yes", state the date, means, purpose, reason and specifically what part was sold, leased, disposed [148] of or alienated and the specific allocation or fund in which such compensations were placed.

—20—

State whether Baconsfield Park is abutted on either boundary by any federal, state, county or city highway, road, stream or project.

—21—

State whether the City of Macon has or has caused to have Baconsfield Park appraised or valued for any purpose since 1955.

—22—

If the answer to No. 21 is "Yes", state the date such appraisals were made, by whom made and the appraised value.

—23—

State the names and number of individuals, who service, maintain and operate Baconsfield Park, stating their particular function, weekdays worked, by whom employed and paid, and weekly pay.

—24—

State the nature, type and size of the operative grant given by Senator Bacon to the City of Macon, Georgia setting forth in proper copy the deed in which same was done and recorded.

—25—

State whether Negroes are now excluded from Baconsfield Park.

—26—

If the answer to No. 25 is "Yes", state whether such exclusion is sanctioned by any legislative or administrative act of the City Council of Macon, Georgia or any court order.

—27—

State the number of persons making use of Baconsfield Park annually from the year 1950 to the present.

—28—

If Negroes are not admitted to Baconsfield Park presently state the last date on which Negroes were admitted to use same.

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—29—

If Baconsfield Park is no longer open state the last date on which same was open and give reasons for the closing.

This 24 day of December, 1966.

/s/ WILLIAM H. ALEXANDER
WILLIAM H. ALEXANDER
859½ Hunter Street, N. W.
Atlanta, Georgia 30314
525-8372
Attorney for Intervenors

FILED IN OFFICE
27th day of December, 1966

/s/ LILLIAN LAVINE
Deputy Clerk

[151]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

ANSWERS TO INTERROGATORIES

—Filed January 6, 1967

Comes now, the City of Macon, acting by and through the Honorable B. F. Merritt, Jr., Mayor, and files these its answers to the interrogatories served upon the City of Macon by counsel for the intervenors and answers the numbered interrogatories as follows:

1.

The names and addresses of the City Councilmen for the City of Macon, Georgia are as listed below. All are currently serving four (4) year terms which expire in November of 1967.

Rex Elder
779 Nottingham Drive
Macon, Georgia

Dan Tidwell
911 Laurel Avenue
Macon, Georgia

Tom H. Ivey
1979 Second Street
Macon, Georgia

T. Fred Davenport
234 Corbin Avenue
Macon, Georgia

William K. Stanley, Jr.
127 Rogers Avenue
Macon, Georgia

Robert M. Wade
2320 Beech Avenue
Macon, Georgia

Jack O. Grant
2950 Hillandale Circle
Macon, Georgia

Sydney J. Pyles
2504 Kensington Rd.
Macon, Georgia

Winton E. Bloodworth
712 Anderson Street
Macon, Georgia

T. Frank Jones
759 Harrold Street
Macon, Georgia

Harold E. Causey
2082 Vineville Avenue
Macon, Georgia

Ronnie Thompson
3925 Easy Street
Macon, Georgia

M. T. Watkins
2608 Napier Avenue
Macon, Georgia

Mrs. Agnes Hatcher
465 Pine Crest Road
Macon, Georgia

2.

No

3.

NOT APPLICABLE

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4.

The only such rule, resolution, ordinance or mandate adopted was the resolution of February 4, 1964, a copy of which is attached as an exhibit to the amendment to the answer of the City of Macon filed February 5, 1964, and which is a part of the record in this case.

5.

As stated in answer to Interrogatory No. 4, the only such resolution is already a part of the record in this case. It became effective upon adoption.

6.

No

7.

NOT APPLICABLE

8.

At one time, caged animals belonging to the City of Macon were on the premises, but it could not really be called a zoo. All of such animals were removed in June of 1964. There was a tool shed and a playground shed located on the premises. As far as is known, they are still there, but are not being used by the City of Macon. A large frame building remains on the premises.

9.

The cages housing the animals were owned and maintained by the City until their removal. The tool shed and the shed housing playground equipment were used by City employees, but it is not known by whom they were owned. They are not believed to be in use at the present time. The large frame building was on the premises when the property was conveyed to the City of Macon as trustee and has been used for various purposes. Recently, it has been used as a womans club house and for social events under arrangement with the Board of Managers, the details of which are [153] unknown to the City of Macon.

10.

No

11.

YES

12.

City funds have been expended in that regular maintenance forces were permitted to perform maintenance functions. The monetary expenditure on such maintenance is unknown and cannot be determined. The work was done

under the supervision of a person employed and paid by the Board of Managers. No City funds have been expended directly or indirectly since June of 1964.

13.

The only trust fund with which the City of Macon has had any connection has long since depleted.

14.

NOT APPLICABLE

15.

The City has no information on which to base an answer to this question. This is a matter solely within the knowledge of the Board of Managers. No separate records were kept in connection with maintenance work done by City employees. One employee of the Recreation Department of the City of Macon worked on the playground which was situated in the park and received a salary from the City in the amount of approximately \$1181.70 per year.

16.

The answer to Interrogatory No. 15 will apply equally to Interrogatory No. 16.

17.

To the best of our knowledge, No.

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18.

No. The fact that the City of Macon resigned as trustee is a matter of record in the case.

19.

NOT APPLICABLE

20.

YES

21.

No

22.

NOT APPLICABLE

23.

The City of Macon has no knowledge of the operation of the park since June of 1964.

24.

The only grant from Senator Bacon was contained in his will which is attached as Exhibit "A" to the petition in this case, and the City of Macon has no other knowledge in this connection.

25.

As far as is known, they are not.

26.

NOT APPLICABLE

27.

The City has no knowledge on which to base an answer and no means of acquiring such knowledge and is, therefore, unable to answer Interrogatory No. 27.

28.

NOT APPLICABLE, as far as the City knows.

29.

The City has no knowledge except to say that the park is an open area which has, as far as is known, been in no way closed [155] off to public use.

This 6th day of January, 1967.

/s/ B. F. MERRITT, JR.
B. F. MERRITT, JR., Mayor
City of Macon, Georgia

GEORGIA, BIBB COUNTY

Personally appeared before F. R. Raley, an officer duly authorized to administer oaths, one B. F. MERRITT, JR., who, after being duly sworn, deposes and says under oath, that all statements contained in the foregoing answers to interrogatories are true and correct to the best of his information and belief.

Sworn to and subscribed before
me, this 6th day of Jan., 1967.

/s/ F. R. RALEY
Notary Public,
(N. P. Seal)
(Bibb Co. Ga.)

/s/ B. F. MERRITT, JR.
B. F. MERRITT, JR.

(Certificate of Service Omitted in Printing.)

[157]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[Title Omitted]

RESPONSE TO MOTION FOR SUMMARY JUDGMENT FILED BY
SUCCESSOR TRUSTEES UNDER WILL OF AUGUSTUS
OCTAVIUS BACON
—Filed January 13, 1967

Comes now, REV. E. S. EVANS, LOUIS H. WYNNE, REV. J. L. KEY, REV. BOOKER W. CHAMBERS, WILLIAM RANDALL, and REV. VAN J. MALONE, Intervenors, who file this response to the motion for summary judgment filed by the successor trustees, and show the Court the following:

—1—

The final order and decree of this Court of March 10, 1964, was appealed to and affirmed by the Supreme Court of Georgia on September 28, 1964, and on writ of certiorari the United States Supreme Court reversed the judgment of the Supreme Court of Georgia on January 17, 1966. Thereafter on March 14, 1966, the judgment of the United States Supreme Court was made the judgment of the Supreme Court of Georgia, reversing and vacating the prior judgment of this Court. The Georgia Supreme Court remanded the case to this Court for further proceedings consistent with the decision of the United States Supreme Court and specifically directed this Court to pass on contentions of the parties not passed on previously.

—2—

That this Court is bound by the said judgment of the United [158] States Supreme Court in the ruling in *Evans, et al. v. Newton, et al.*, 86 S. Ct. 486, 15 L. ed. 2nd 373.

—3—

That the said judgment of the Georgia Supreme Court on remand is not a final judgment as a matter of State or federal law inasmuch as there remains to be done by this Court action affecting the interest of all parties concerned.

—4—

That the Baconsfield trust has neither been completely administered nor is it unenforceable as a matter of law and the trust is further obliged to be enforced by the City of Macon, Georgia under the doctrine of Cy Pres.

—5—

That under no circumstances presented by the record of this case, or the subsequent motion of the successor trustees seeking a summary judgment, is a failure of the Baconsfield trust required as a matter of law.

—6—

That the State of Georgia has created, and the City of Macon has controlled, participated, and involved itself in Baconsfield Park to such a substantial degree, and over such a long period of time that there has in effect been created an irrevocable trust and dedication of Baconsfield Park to the City of Macon for the use of its citizens.

—7—

That the grant of Baconsfield Park from Senator Bacon and a subsequent acceptance by the City of Macon should be construed as a dedication of lands to public use, of which there can be no appropriation by the heirs or others to be used for private purposes.

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—8—

That to effect a reversion of Baconsfield Park to the estate of Senator Bacon and to order a distribution of same to the heirs at law for the sole purpose of preventing Negroes the right to use said park, will amount to State action in the aid of Senator Bacon's clear discriminatory intent which is a clear violation of the Fourteenth Amendment rights of the Negro intervenors and members of their class as espoused by the Supreme Court of the United States in the case of *Shelley v. Kramer*, 334 U. S. 1.

—9—

That the City of Macon, Georgia, in its corporate capacity, owns and holds Baconsfield Park by grant from Senator Bacon in fee simple absolute and may not abandon, or disclaim same for the sole purpose of denying Negroes the use of said park.

WHEREFORE, intervenors pray that this Court:

a) deny defendant movants the requested motion for a summary judgment;

b) vacate its previous judgment permitting the City Council of Macon, Georgia to resign as trustee of Baconsfield;

c) vacate its previous judgment appointing private trustees to administer the Bacon trust;

d) make so much of the Georgia Supreme Court's judgment on remand as is consonant with and not inconsistent with the judgment of the United States Supreme Court in the case of *Evans, et al. vs. Newton, et al.*, 86, S. Ct. 486, 15 L. ed. 2d 373, the judgment of this Court; and

e) declare the City Council of Macon, Georgia and its successors in interest the trustee of the [160] Baconsfield Park forever to hold, maintain and operate as a public park on a nondiscriminatory basis and otherwise in accordance with the wishes of Senator Bacon as expressed in his last will and testament; or

f) alternately, declare the City Council of Macon, Georgia and its successors in interest, the bona fide holders of Baconsfield Park in fee simple;

g) grant them cost and attorneys fees in this action;

h) grant such other and further relief as to this Court may seem just and proper.

This 12 day of January, 1967.

/s/ WILLIAM H. ALEXANDER

WILLIAM H. ALEXANDER

859½ Hunter St., N.W.

Atlanta, Georgia 30314

JACK GREENBERG

JAMES M. NABRIT, III

10 Columbus Circle

New York, New York 10019

Attorneys for Intervenors

(Certificate of Service Omitted in Printing.)

[161]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

RESPONSE TO MOTION FOR SUMMARY JUDGMENT FILED BY
SUCCESSOR TRUSTEES UNDER WILL OF AUGUSTUS
OCTAVIUS BACON—Filed January 16, 1967

NOW COME Hugh M. Comer, Lawton Miller, and B. L. Register, as successor trustees in lieu of the City of Macon and all of the members of the Board of Managers of Baconsfield, both the individuals in whose behalf the original complaint was filed and their successors the presently acting members of said Board of Managers of Baconsfield, in response to the Motion for Summary Judgment which has been filed by Guyton G. Abney, et al, as successor trustees under the Last Will and Testament of Augustus Octavius Bacon, deceased, and show:

1.

These respondents in their respective capacities as Trustees and as members of the Board of Managers of Baconsfield, have endeavored to the best of their abilities to discharge their duties in such capacities in accordance with the provisions of the trust which was created by the will of Augustus Octavius Bacon, deceased.

2.

The Supreme Court of Georgia having ruled that it is of the opinion that the sole purpose for which this [162] trust was created has been terminated, as alleged in Paragraph 2 of the motion, these respondents stand ready to account for all funds and property constituting the assets of said trust

in their hands, and to abide the further orders of this Court.

WHEREFORE, respondents pray that a decree be entered determining whether said trust has terminated and directing these respondents as to the persons to whom they should account for the assets of the trust which are in their hands in the event it is determined that said trust has been terminated.

/s/ MARTIN, SNOW, GRANT & NAPIER
MARTIN, SNOW, GRANT & NAPIER
700 Home Federal Building
Macon, Georgia

*Attorneys for Hugh M. Comer,
Lawton Miller, and B. L. Register,
Successor Trustees in lieu of the
City of Macon, and attorneys for
the members of Baconsfield Board
of Managers as formerly or now
constituted.*

(Certificate of Service Omitted in Printing.)

[164]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[Title Omitted]

RESPONSE TO MOTION FOR SUMMARY JUDGMENT FILED BY
SUCCESSOR TRUSTEES UNDER WILL OF AUGUSTUS
OCTAVIUS BACON—Filed January 16, 1967

Come now WILLIS B. SPARKS, JR., VIRGINIA LAMAR SPARKS and M. GARTEN SPARKS, and THE CITIZENS AND SOUTHERN NATIONAL BANK AND WILLIS B. SPARKS, JR., AS EXECUTORS OF THE WILL OF A. O. B. SPARKS, Deceased, intervenors in the above captioned case, and file this response to the motion for summary judgment filed by the Successor Trustees as follows:

1.

Respondents admit the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of said motion for summary judgment.

2.

Answering paragraph 13 of said motion respondents admit that one or more suitable persons should be appointed by this court for the purposes set forth in said paragraph.

3.

Respondents admit paragraph 14 of said motion.

WHEREFORE, having fully answered, respondents join with said Successor Trustees under the Will of Augustus Octavius Bacon in praying for the judgment and other relief sought by them.

/s/ JONES, SPARKS, BENTON & CORK
Jones, Sparks, Benton & Cork
1007 Persons Building
Macon, Georgia 31201

Attorneys for Respondents

(Certificate of Service Omitted in Printing.)

[166]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[Title Omitted]

INTERROGATORIES—Filed February 1, 1967

To:

BOARD OF MANAGERS OF BACONSFIELD PARK

AND

MARTIN, SNOW, GRANT & NAPIER, their Attorneys of record.

Comes now, REV. C. S. EVANS, et al., intervenors, and for purposes of discovery, requires the Board of Managers to answer the following interrogatories within fifteen (15) days from the date of service, as provided by law, and that a copy of the answers be furnished intervenors' attorney, William H. Alexander.

—1—

State whether Baconsfield Park at anytime housed or had on the premises a zoo, museum, menagerie, public exhibit or a building of any kind, and whether such is presently on the premises of the park.

—2—

With reference to No. 1, state specifically what was housed or placed on the premises of the park and by whom owned and maintained.

[167]

—3—

State whether any Federal, State or City funds have been expended for the maintenance, operation or capital improvement of the park since 1950.

—4—

If the answer to No. 3 is "yes," set forth separately the amount of such Federal, State or City funds expended, indicating the year expended and what specific purpose the money was expended.

—5—

State whether the income from the trust fund left or established by Senator Bacon to operate and maintain the park has been depleted.

—6—

If the answer to No. 5 is "yes," state the year in which depleted and the sources of operating revenue for the park since the year of depletion.

—7—

If the answer to No. 5 is "no," state the amount which is presently extant and the depository for same.

—8—

State the annual operating and maintenance cost of Baconsfield Park for the calendar years 1965 and 1966.

—9—

With reference to No. 8, state the amounts and specific purposes for which all monies were expended to maintain and operate the park during the period 1960 and 1966, inclusive.

—10—

If capital expenditures have been made on the park during [168] the period 1955 to 1966, inclusive, state the

amount of such expenditures for each year and the purpose for which spent.

—11—

State whether any individuals or organizations have contributed monies, items, animals, or other tangibles to Baconsfield Park, for the maintenance, operation, beautification, improvement, enjoyment, or for additions to Baconsfield Park. If the answer is "yes," specify in detail what was contributed and by whom.

—12—

State the names and titles or positions, and the addresses of the persons who have had the administrative responsibility for operating Baconsfield Park during the period 1960 to 1966, inclusive.

—13—

State the names and number of individuals, who during the years 1963 and 1966, serviced, maintained and operated Baconsfield Park, stating their particular function, week-days worked, by whom employed and paid, and their weekly or monthly pay.

—14—

State whether there are any buildings located on Baconsfield Park which were built with federal funds, or which were built with the help of any federally aided program.

—15—

If the answer to No. 14 is "yes," describe the building, state the year it was completed, and the amount of federal

funds expended, and the federally aided program that was involved.

—16—

If any building on Baconsfield Park has been used by any [169] club, group or organization for a regular meeting place during the period 1955 to 1966, inclusive, give the following information:

(a) Name and address of the club, group, or organization;

(b) The years in which it has held meetings;

(c) The purpose or function of the club, group, or organization;

(d) The approximate number of members of the club, group, or organization;

(e) State whether the said members are white or Negro, to the best of your knowledge;

(f) State whether the club, group or organization during the years 1960 to 1966 paid any money to the Board of Managers or the City of Macon for the use of said building on Baconsfield Park. If the answer is "yes," state the amount of money and to whom paid.

(g) State how the building being used for the club, group, or organization is maintained (e. g., who keeps it clean, repairs it, etc.).

—17—

If any building on Baconsfield Park has not been used as a regular meeting place for any club, group, or organization, but has, from time to time, been used as a meeting place, or for educational or recreational purposes, by dif-

ferent clubs, groups, or organizations, then give in reference thereto the information requested in subparagraphs (a) through (g) above.

—18—

State, to the best of your knowledge, the number of persons who used Baconsfield Park during each of the following years: 1964, 1965, and 1966.

[170]

—19—

State what recreational facilities and equipment are located at the park.

—20—

To the best of your knowledge, has there ever been any fees charged for the use of Baconsfield Park or for admission thereto?

—21—

If the answer to No. 20 is "yes," state who imposed the charges or admission fee, the purpose for charging same, the amount collected during each of the last five years, and how the same was expended.

—22—

In reference to No. 5 above, state whether there is now in existence a trust fund or any other type of fund used exclusively for the care, operation, maintenance, and capital improvement of Baconsfield Park. If the answer is "yes," state the amount that was in existence on each of the following dates and the name of the bank or depository of same:

- (a) January 1, 1955;
- (b) January 1, 1964;
- (c) January 1, 1965;
- (d) January 1, 1966;
- (e) January 1, 1967.

This 30 day of January, 1967.

/s/ WILLIAM H. ALEXANDER
WILLIAM H. ALEXANDER
859½ Hunter St., N. W.
Atlanta, Georgia 30314

JACK GREENBERG
JAMES M. NABRIT, III
Suite 2030
10 Columbus Circle
New York, New York 10017

Attorneys for Intervenors

(Certificate of Service Omitted in Printing.)

[172]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

ANSWER OF BOARD OF MANAGERS OF BACONSFIELD PARK TO
INTERROGATORIES OF REVEREND C. S. EVANS, ET AL.,
INTERVENORS—Filed February 14, 1967

The interrogatories served upon counsel for the Board of Managers of Baconsfeld brought by attorneys for Reverend C. S. Evans, Et. al., Intervenors, are answered as follows:

1.

Baconsfeld Park at one time housed a few animals in cages but never in sufficient number or variety to be properly classed as a zoo. None of such animals or cages are located on the premises at this time and have not been located there since June, 1964. The Park does have on its premises a building which is known as the Woman's Clubhouse.

2.

A few animals consisting of monkeys, a bear, ducks, rabbits, a raccoon, a few deer, a few peafowl and pheasants were at one time kept in cages in one area of the Park, and so far as is known to this Board, said animals were owned and maintained by the Trustee named in Senator Bacon's will. All of said animals and cages were removed from the Park [173] by June, 1964, and have not been maintained there since that date. The building known as the Woman's Clubhouse is a part of the real estate upon which the Park is located, and consequently is owned by the owner of the legal title to the land on which it is located.

It is maintained by the Macon Woman's Club, a private organization, which is in exclusive charge of the use of that building.

3.

Some City funds have been expended for the maintenance and operation of the Park from 1950 up until the City resigned as Trustee in 1964, and since that date no City funds and no Federal or State funds have been expended for maintenance, operation or capital improvement of the Park.

4.

The amounts of such funds expended by the City are unknown to the Board of Managers of Baconsfield.

5.

As to the trust fund consisting of bonds bequeathed to the Mayor and Council of the City of Macon by the tenth item of Senator Bacon's will, the members of the Board of Managers of Baconsfield have no knowledge as to whether the income or principal thereof has been depleted, but as to the property which the ninth item of said will directed that the Board of Managers might use for the purposes of income, said property is presently being used by the Board for the purpose of income and is producing income.

[174]

6.

Not applicable.

7.

The Board of Managers of Baconsfield now has on hand the sum of \$9,746.21, received as income, and the same is deposited in the First National Bank & Trust Company in Macon.

8.

The annual operating and maintenance costs of Baconsfield Park for the calendar year 1965 was \$7,073.80 and for the year 1966 was \$6,675.89.

9

Monies which were expended by the Board of Managers of Baconsfield for maintaining and operating the Park during the years stated in this interrogatory were as follows:

1960—Flowers and fertilizers \$665.78, Insurance \$26.28, Agent's Commissions \$255.00, Maintenance \$350.00, Equipment \$-0-, Labor \$-0-, Misc. \$10.14.

1961—Flowers and fertilizers \$817.72, Insurance \$31.00, Agent's Commission \$255.00, Maintenance \$-0-, Equipment \$-0-, Labor \$542.00, Misc. \$-0-.

1962—Flowers and fertilizers \$904.67, Insurance \$27.90, Agent's Commission \$272.92, Maintenance \$13.60, Equipment \$253.98, Labor \$522.50, Misc. \$-0-.

1963—Flowers and fertilizers \$658.30, Insurance \$27.90, Agent's Commissions \$279.00, Maintenance \$-0-, Equipment \$-0-, Labor \$500.00, Misc. \$-0-.

1964—Flowers and fertilizers \$320.00, Insurance \$248.89, Agent's Commissions \$261.25, Maintenance \$4,697.52, Equipment \$500.00, Labor \$500.00, Misc. \$18.12.

1965—Flowers and fertilizers \$44.80, Insurance \$314.00, Agent's Commissions \$569.82, Maintenance \$4,868.40, Equipment \$-0-, Labor \$1,256.28, Misc. \$20.50.

1966—Flowers and fertilizers \$-0-, Insurance \$289.00, Agent's Commissions \$360.79, Maintenance \$3,257.33, Equipment \$-0-, Labor \$2,768.77, Misc. \$-0-.

10.

Capital expenditures made by the Board of Managers during the period 1955 to 1966 were as follows:

1956—Paving Brick Walk	\$3,392.10
Fill work in play area	3,500.00
Gate entrance	4,815.80
1957—Fill work	5,400.00
1958—Asphalt work	1,300.00
1959—Sprinkler system and labor	1,100.00
[175]	
1959—Storm sewer, driveway curb and gutter from Nottingham Drive to parking area	\$4,009.75

11.

Various persons have from time to time contributed animals, flowers, shrubbery and other items, but no record has been kept thereof and the members of the Board are unable to now name any specific gift by any specific person.

12.

The persons who have had the administrative responsibility for operating Baconsfield Park during the period 1960 to 1966 are the individuals who were the members of the Board of Managers of Baconsfield Park during those respective years. They are as follows:

Charles E. Newton, Jr. 1268 Twin Pines Drive Macon, Georgia	1960-1964
Mrs. Frederick Williams Twin Pines Apartments Macon, Georgia	1960-1964

Mrs. T. J. Stewart
2520 Vineville Avenue
Macon, Georgia

1960-1964

Mrs. Kenneth W. Dunwody
4727 Rivoli Drive
Macon, Georgia

1960-1964

Frank M. Willingham
1139 Oakcliff Road
Macon, Georgia

1960-Present

Mrs. Francis K. Hall
1471 Peyton Place
Macon, Georgia

1963-Present

A. M. Anderson
1293 Jackson Springs Road
Macon, Georgia

1964-Present

Mrs. W. E. Pendleton, Jr.
1374 Twin Pines Drive
Macon, Georgia

1964-Present

Mrs. R. A. McCord, Jr.
1386 Waverland Drive
Macon, Georgia

1964-Present

George P. Rankin
920 Curry Drive
Macon, Georgia

1959-Present

[176]

Mrs. Dan O'Callaghan
1193 Oakcliff Road
Macon, Georgia

1964-Present

Mrs. P. L. Hay
(Now deceased)

1960-1963

13.

During the year 1963 the individuals who constituted the maintenance crew were employed and paid by the Trustee, and the Board of Managers has no record of their names, pay or functions. In addition to the individuals who were paid to perform maintenance services, the members of the Board during 1963 and at all other times have donated their own personal services without compensation and have done a great amount of actual maintenance and improvement work. During the year 1966 work continued to be done by various members of the Board, particularly Mrs. Francis K. Hall and the other female members of the Board; one regular employee, Roscell Johnson worked six days per week as weather permitted cutting grass, working in the flower beds, etc., and was paid \$1.25 per hour, James Howard was paid \$25.00 per week to pick up trash, etc., except when work was unusually heavy, he was paid extra.

14.

The Board has no minutes or other records upon which to base an answer to this interrogatory, and no member of the Board has any personal knowledge of any building being [177] built with Federal funds or the help of any federally aided program.

15.

The answer is the same as the answer to No. 14.

16.

During all of the period from 1955 to 1966 the Woman's Clubhouse in Baconsfield Park has been in the exclusive custody of the Woman's Club of Macon, a private organization, and the Board has no knowledge or information as to what organizations or groups may have been permitted to use the same by said Woman's Club of Macon. In answer

to subparagraph (f), no money has been paid to the Board of Managers for the use of that building, and the Board cannot answer as to whether any money has been paid to the City of Macon, but believes that it has not. In answer to subparagraph (g), the Woman's Club of Macon maintains the building and makes repairs thereto.

17.

There is no other building in Baconsfield Park itself which is used for meeting places for any kind of organization except the Woman's Club building referred to in answer to Interrogatory 16. There is a building located in the part of the property constituting the trust property which is designated by the will as being property to be used for income which is leased by the Board of Managers to the City of Macon, and the City has exclusive charge of the use of that building which it holds under lease, paying rent of \$25.00 per month which is the fair rental value thereof.

[178]

18.

No records are kept by the Board of Managers as to the number of persons who used Baconsfield Park during any year, and it is impossible to state the number of persons who used the same.

19.

Recreational facilities and equipment located in Baconsfield Park consist of outdoor tennis courts and basketball courts, softball fields with limited stands for spectators, and a small amount of playground equipment such as swings, see-saws, climbing bars, etc.

20.

No fees have ever been charged for the use of Baconsfield Park or for admission thereto, so far as is known to

the Board of Managers. It is the belief of the Board of Managers that the Woman's Club of Macon does make charges for the use by various organizations of the Woman's Clubhouse building, but the Board had no specific knowledge or information and no records as to such charges.

21.

Answered by the answer to No. 20.

22.

The Board of Managers of Baconsfield has charge of the property specified in Senator Bacon's will to be used for the purpose of income and does derive income from various leases of said property for income purposes. This income has been used exclusively for the care, operation, maintenance and improvement of Baconsfield Park as directed by said will. The funds representing income and constituting the funds used for those purposes which was in existence on the respective [179] dates about which inquiry is made were as follows:

(a) January 1, 1955	\$10,121.29
(b) January 1, 1964	\$17,382.61
(c) January 1, 1965	\$12,225.56
(d) January 1, 1966	\$ 7,460.57
(e) January 1, 1967	\$ 9,205.11

/s/ MARTIN, SNOW, GRANT & NAPIER
 MARTIN, SNOW, GRANT & NAPIER
 700 Home Federal Building
 Macon, Georgia

*Attorneys for the Board of
 Managers of Baconsfield.*

[180] GEORGIA, BIBB COUNTY

Personally appeared before the undersigned officer authorized to administer oaths, FRANK M. WILLINGHAM, who, after being duly sworn, states on oath that the facts stated in the foregoing answers to interrogatories, so far as they are based upon his own knowledge, are true, and that so far as based upon information and the knowledge of others, he believes them to be true.

/s/ FRANK M. WILLINGHAM
FRANK M. WILLINGHAM

Sworn to and subscribed before me,
this 13 day of February, 1967.

/s/ MERRY ANN FINCH (N. P. Seal)
Notary Public, Bibb County, Georgia.
My Commission Expires June 26, 1967.

(Certificate of Service Omitted in Printing.)

[182]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

SECOND SET OF INTERROGATORIES—Filed April 11, 1967

To: Board of Managers of Baconsfield Park
and
Martin, Snow, Grant & Napier, their
Attorneys of Record

Comes now, REV. C. S. EVANS, et al., intervenors, and for purposes of discovery, requires the Board of Managers to answer the following interrogatories within fifteen (15) days from the date of service, as provided by law, and that a copy of the answers be furnished intervenors' attorney, William H. Alexander.

—1—

State why the animals and cages were removed from Baconsfield Park in June 1964.

—2—

State whether the said animals and cages were sold or given away and give the name and address of the person, company, organization, or group to which they were given or sold.

—3—

If the said animals and cages were sold, state the consideration received for same.

—4—

State whether the Macon Woman's Club now pays or in the past [183] paid any rent for the use of the Woman's Clubhouse on Baconsfield Park.

—5—

If the answer to No. 4 is "yes," state the annual amount paid from 1955 to January 1, 1967, inclusive.

—6—

State the year in which the said Club first occupied or took control and possession of the said Clubhouse.

—7—

In further reference to the said Clubhouse, give the following information:

(a) Was a written agreement executed by the said Club in reference to use of the said Clubhouse? If the answer is "yes," attach a copy of said agreement to these answers;

(b) If the said Club did not execute a written agreement, state whether an oral agreement was made relative to the said Clubhouse and if so, give the terms of the agreement;

(c) Give complete details regarding how the said Club came to have exclusive use of the said Clubhouse, including, *inter alia*, the name of the park officials with whom the Club negotiated, the reasons for desiring the use of the said Clubhouse, etc.

This 10 day of April, 1967.

/s/ WILLIAM H. ALEXANDER

WILLIAM H. ALEXANDER

859½ Hunter St., N. W.

Atlanta, Georgia 30314

JACK GREENBERG

JAMES M. NABBIT, III

10 Columbus Circle

New York, New York

Attorneys for Intervenors

[185]

[Title Omitted]

ANSWERS OF BOARD OF MANAGERS OF BACONSFIELD PARK TO
SECOND SET OF INTERROGATORIES BY REV. C. S. EVANS,
ET AL., INTERVENORS—Filed April 21, 1967

The second set of interrogatories directed to the Board of Managers of Baconsfield Park by Rev. C. S. Evans, et al., Intervenors, are answered as follows:

1.

The Board of Managers contacted the City of Macon in October, 1961, and again in May, 1962, requesting that the animals be moved to a City owned park, Central City Park, but these requests were not complied with until sometime in 1964. The Board of Managers is unable to state whether the animals and cages were removed by the City of Macon in response to the previous request from the Board or whether they were removed by the City of Macon for the purpose of carrying out its policy, evidenced by its resolution of February 4, 1964, to resign as Trustee and to disassociate itself entirely from the operation of the park.

2.

The removal and disposition of the animals and cages was handled entirely by the City of Macon, so the Board of Managers of Baconsfield has no information from which to [186] answer this interrogatory.

3.

The answer is the same as the answer to No. 2.

4.

No rent is paid to the Board of Managers of Baconsfield by Macon Woman's Club for the use of the clubhouse, nor has any rent ever been paid for such use.

5.

None.

6.

The written minutes of the Board of Managers dating back to March 30, 1936, do not reveal when the clubhouse was first occupied, and the date is not within the knowledge or recollection of the members of the Board.

7.

The Board's records do not reveal any type of agreement, written or oral, in reference to use of the clubhouse; and the use of the clubhouse under the present arrangements was in existence before any member now on the Board became a member thereof, and the present members have no knowledge as to how said club came to have the exclusive use of the clubhouse, it being a situation which was already in existence at the time they each individually first became a member of the Board.

/s/ MARTIN, SNOW, GRANT & NAPIER
MARTIN, SNOW, GRANT & NAPIER
700 Home Federal Building
Macon, Georgia

*Attorneys for Board of Mahagers
of Baconsfield.*

[187] GEORGIA, BIBB COUNTY

Personally appeared before the undersigned officer authorized to administer oaths, FRANK M. WILLINGHAM, who after being duly sworn, states on oath that the facts stated in the foregoing answers to interrogatories, so far as they are based upon his own knowledge, are true, and that so far as they are based upon information and the knowledge of others, he believes them to be true.

/s/ FRANK M. WILLINGHAM
FRANK M. WILLINGHAM

Sworn to and subscribed before me,
this 19th day of April, 1967.

/s/ (Illegible) (N. P. Seal)
Notary Public, Bibb County, Georgia.

(Certificate of Service Omitted in Printing.)

[193]

IN THE SUPERIOR COURT OF BIBB COUNTY

(Title Omitted)

DEPOSITIONS OF MAYOR B. F. MERRIT, MR. CLEVELAND JAMES,
MR. FRANK WILLINGHAM, MRS. MARY BUDD KEARNES, MR.
LAWTON MILLER AND A. M. ANDERSON—FILED MAY 22, 1967,
AND ORDER OPENING NOVEMBER 13, 1967

Macon, Georgia—10:00 A.M.—April 24, 1967

Depositions of MAYOR B. F. MERRITT, MR. CLEVELAND JAMES, MR. FRANK WILLINGHAM, MRS. MARY BUDD KEARNES, MR. LAWTON MILLER, AND MR. A. M. ANDERSON, called by intervenors before Hazel C. Farmer, Notary Public, Georgia, Bibb County; testimony taken at 700 Home Federal Building, Macon, Georgia, beginning at 10:00 A.M., April 24, 1967.

APPEARANCES:

For *Intervenors*:

E. S. Evans et al.:

MR. JAMES M. NABRIT, III,
10 Columbus Circle,
New York 19, New York.

MR. WILLIAM H. ALEXANDER,
859½ Hunter Street, N.W.,
Atlanta, Georgia.

For *Board of Managers of Baconsfield
and Substitute Trustees*:

MR. GEORGE C. GRANT of Martin, Snow,
Grant & Napier,
700 Home Federal Building,
Macon, Georgia.

*For heirs of Senator Bacon and
trustees under his will:*

MR. C. BAXTER JONES and
MR. WILLIS B. SPARKS, III of
Jones, Sparks, Benton & Cork,
500 First National Bank Building,
Macon, Georgia.

For City of Macon:

MR. TRAMMELL F. SHI of
Shi and Raley,
Southern United Building,
Macon, Georgia.

[194] STIPULATION:

All objections except as to the form of the question, RESERVED to the time of the hearing. Reading and signing of transcript by witnesses WAIVED by witnesses and counsel.

Depositions taken by agreement of counsel with all formalities being WAIVED.

The Witnesses are called for cross examination and for the purposes of discovery by E. S. Evans, et al., intervenors in this case pursuant to agreement of counsel. The depositions are being taken of members of the Board of Managers of Baconsfield Park, plaintiffs in the case, and certain officials of the City of Macon, defendants in the case. Counsel have agreed to waive all formalities and reserve all objections until the time of any hearing except as to the form of the question, and it has been stipulated that all parties will waive the signatures of the witnesses.

MAYOR B. F. MERRITT, JR., witness called by the intervenors, being first duly sworn, testified on examination.

By Mr. Alexander:

Q. Mayor Merritt, I believe you have been sworn, sir?

A. Yes.

Q. Will you state your full name? [195] A. B. F. Merritt, Jr.

Q. And what is your address, Mr. Merritt? A. 2470 Clayton Street, Macon, Georgia.

Q. I see, what is your official title or position, sir? A. Mayor.

Q. Mayor of the City of Macon? A. That's correct.

Q. How long have you been Mayor? A. I first went in office in 1953, November and served until November, '59 and from November, '63 to the present.

Q. When does your present term expire? A. November this year, 1967.

Q. Now, during the time that you have been in office, have you had the occasion to make decisions relative to a park known as Baconsfield Park? A. Not relative to the park because we didn't, I say we, the City did not actually control this park. The Board of Managers managed the park. The only decisions might be called upon that I can remember on any occasion was the question of action that the Board had taken which we had to make some query about, not that it might say called for a decision on our part except that maybe keep informed of what was being done there, although title was in the City, never in my experience had we actually controlled it.

[196] Q. You are familiar with the history of the litigation involved in this case with Baconsfield Park? A. That's correct.

Q. And you have some knowledge about the park? A. Yes.

Q. Let me ask this: What is the size of Baconsfield Park?
A. Now, you are getting a little technical.

Q. If you don't know the exact— A. I wouldn't know the exact acreage.

Q. Could you give us any kind of approximation? A. I don't know, I imagine 15 or 16 acres.

Q. When you say 15 or 16 acres, do you have reference to the total area of the park? A. The total area of the park, well, not considering all that was in Senator Bacon's trust agreement, but only that which was park.

Q. Well, would you describe for us as best you can the area that you stated constitutes the 15 or 16 acres? A. That which is on the north and west side of North Avenue and extends along side the river for I would say 1500 or 2000 feet and then approximately 5 or 600 feet back to what we know as Nottingham Avenue and then back to North Avenue.

Q. Are you familiar with the street known as Parkview [197] Drive? A. Parkview Drive, yes.

Q. The area that you just described, would that be the property bounded by Nottingham Road on one side, by Spring Street on one side and by Parkview Drive on one side and the river on the other side? A. That's correct.

Q. And it is your opinion that that area just described consists of about 15 or 16 acres to the best of your knowledge? A. Maybe more, not being a farmer I can't estimate acreage very well.

Q. Well, let me ask you this, would it surprise you if you learned that the area that you have just described consisted of some 50 or 60 acres? A. No.

Q. It wouldn't surprise you at all? A. No.

Q. I see. Now, is there any property located across the street from the area that you have just described, by across the street I mean directly across from Spring Street? A. Yes.

Q. Would you describe that property as trust property or income producing property? [198] A. That was income producing property which the Board has always in my experience, the City has never had anything to do with it.

Q. Well, let me ask this, could you give us an approximation of the size of that property that you just referred to? A. Well, if that other had 50 or 60 acres in it, I would say this was nearer about 10 or 12, smaller area.

Q. Is it possible to give us an estimation of how many blocks this so called trust property consists of? A. Well, I have always been under the impression that they only had a small piece down by the river, but it is more than I thought from recent plats that the Board controls, so I would say that it was about considering blocks, maybe two square blocks, what we know as an ordinary block which is 440 by 440.

Q. When you say ordinary blocks, are you referring to so-called city blocks? A. I am referring to a standard city block in the old City of Macon.

Q. During the time that you have been in office, has the City of Macon had the occasion to have the property that you have just described appraised? A. No.

Q. What value would the City of Macon put on that [199] land? A. Well, I don't know that the City could put any value on it. As I say, the City has never been concerned with it. It certainly wasn't considered, if you say as an asset of the City on account of its set-up. We didn't exactly include it. When I say we, the City didn't include it among their assets that were owned in fee simple, even though title did rest in the City on account of the way it was managed and controlled.

Q. Did the City have separate books relative to this property known as Baconsfield? A. No.

Q. Any transaction that the City engaged in relative to the park would be in the records of the City which also con-

tain transactions of other City business; is that correct? A. It would only be considered in the light of what the City did in that particular department, I mean it wasn't set aside at all.

Q. During the time that you have been in office, Mayor Merritt, has there been any property which could be called Baconsfield Park trust property other than the two pieces that you have just described? A. No, not to my knowledge.

Q. So, the two pieces that you have just described [200] would be the entire area of land which could be described as Baconsfield Park or trust property under the will of Senator Bacon; is that correct? A. That is correct.

Q. Could you tell us very briefly in your own words what type of facilities are located on Baconsfield Park? A. On the northeast corner of the tract which is north and west of Spring Street, you refer to it, I would say North Avenue because it used to be that way after you cross the river was a school playground. Just to the west and down Nottingham Drive there were tennis courts which the Macon Tennis Club initiated and the Women's Club which faces Spring Street, the zoo or a building or two and a fence was there; and, when I say zoo, that was the monkey cage, I think, and maybe a few small animals was all it ever contained, and one little rock garden house down in the southwest corner. That's on the north and west side of the street. Was that the area you were asking about?

Q. Yes, I will get to this in a moment. I don't want to interrupt you, sir. Have you finished? A. Yes.

Q. Let me ask—Let's go off the record for a moment. A. Spring Street is what it is known as up to the [201] bridge and at the bridge North Avenue on north.

Mr. Nabrit: The street running by the front gate—

The Witness: Is really North Avenue, referred to originally as Spring Street, but we commonly call it North Avenue.

By Mr. Alexander:

Q. Let me ask this, what is the official name of the street; is it North Avenue? A. North Avenue.

Q. So— A. Many people say Spring because at the bridge Spring Street quits.

Q. So going from down town Macon, I guess this would be Riverside Drive toward the park would be Spring Street?

A. That's right.

Q. Once you cross the bridge on the Ocmulgee River, it would then be North Avenue? A. North Avenue, correct.

Q. And it would be North Avenue that goes on— A. North Avenue goes on over the hill.

Q. So, when I stated a few moments ago about the land across from Spring Street as having, as being income producing property, technically that's property across from North Avenue? [202] A. Correct.

Q. Now, did you describe all of the facilities that are on the park to the best of your knowledge? A. Yes, I would know, that's all that is on there.

Q. And to the best of your knowledge, there has been no additional equipment or additional facilities on the park during the time that you have been mayor? A. No.

Q. Now, with reference to this zoo, you referred to it, I believe, as a monkey house; is that presently on the park? A. No.

Q. Can you tell us when it was first put on the park? A. No, I can't tell you when. I inherited it.

Q. And you took office in 1953? A. Yes.

Q. So, this zoo was on the park premises prior to 1953? A. That's correct.

Q. Can you tell us when the zoo was removed from the park? A. Either in—we had been in a discussion with the Macon Museum of Arts and Sciences, Junior Chamber of Commerce, in fact I had offered the zoo to several other people because we had discovered that we had a very bad

[203] tribe out there, the people in that particular business said were very unattractive and they were, and we tried to dispose of them and didn't have much success. So, the Junior Chamber of Commerce offered to take them off our hands, and I believe that was early '64, early '64 which they did, and we got out of the zoo business.

Q. What did you mean when you said or you made reference to a tribe? A. Well, this particular type of monkey, I don't remember what it was now, but it horrified the man that came to look them over that we had selected this particular tribe to have in a zoo.

Q. I see. A. Because about their most outstanding characteristic, I think, was their rapidity in which they produced out there, and we just got more monkies than we could use, and it was not a very—in the opinion of those who had to deal with it, a very attractive thing to have. I think maybe a few enjoyed them, but we didn't have much objection to getting rid of them.

Q. Can you give us some idea of the approximate number of monkeys you had? A. Oh, I think we had 40 or 50.

Q. Did you have other animals there other than monkeys? [204] A. Oh, a few small animals like rabbits and we had one or two deer at one time. We had a very old elk which gave us considerable trouble, what you might see in a children's zoo, maybe a squirrel cage.

Mr. Nabrit: Goats?

The Witness: I don't know whether we were unfortunate enough to have any goats or not. We may have, but I don't believe so.

Q. Could you give us an estimate of the total number of animals that you had? A. Oh, it wouldn't be—it would go in that same figure, 40 or 50 would probably include them all.

Q. Do you know whether you had any ducks? A. I think they did have a few ducks. I don't know where they came from. They might have just settled in the pond down there.

Q. What about peafowl? A. I think they had one, I don't know at what time, but I remember sometime in my day they had one.

Q. Any pheasants? A. I couldn't say whether there was a pheasant there or not.

Q. Now, these animals that you have just described, were they purchased by the City? A. Now, that I couldn't say. I know in my day I have [205] never authorized the buying of one. I guess you can infer that I was not a lover of this zoo.

Q. To the best of your knowledge, did the City at any time authorize or appropriate or spend any money for the purchase of any animals during the time that you were mayor? A. Not to my knowledge, I tried to sell some, but I made that deal.

Q. What about the maintenance of the zoo during the time you were mayor, did the City of Macon spend or appropriate money for the maintenance of the zoo? A. Well, I believe the Board on one or two occasions brought up the fact that we weren't doing a very good job of cleaning it up which we usually could spare work detail out of the public works department maybe to put it in a little better shape, but to my knowledge no specific request on any item. It wasn't that big, you might say.

Q. I see, who fed and took care of the animals there at the zoo? A. There was one elderly gentleman with the parks department, I believe.

Q. What was his name, sir? A. I couldn't tell you to save my life.

Q. He was an employee of the City? A. I believe he was, now, I couldn't be positive, and you can infer from my answers that this was, this operation [206] was one step

removed from what our normal city departments are and I didn't involve myself too much in the details of that park.

Q. But to the best of your knowledge one elderly fellow whose function it was to take care of the animals? A. I don't know on what basis he was really retained.

Q. But to the best of your knowledge, he was a city employee who looked after the animals? A. I would think he would be. I can't be positive about that.

Q. Yes, I am asking to the best of your knowledge. And to the best of your knowledge is he now employed? A. No.

Q. Has he retired or resigned? A. I couldn't tell you what happened to him.

Q. Can you state how many employees the City now has there at the park? A. None.

Q. All right, let me go back a moment to the zoo. I believe you stated that the animals were removed from the park in 1964; is that correct? A. I believe that was the date, it was in the middle of the year because, as I remember, because we had a consideration as to how we were going to get rid of them and what and who we would transfer them to.

[207] Q. And what group or what persons did you transfer them to? A. The Jaycees, Macon Jaycees, Junior Chamber of Commerce took charge of those monkeys.

Q. Did they take charge of all of the animals there or just the monkeys? A. Just the monkeys, I don't know what we did with the rest of them.

Q. What amount did the Jaycees pay the City of Macon for them? A. They didn't pay a thing. I almost—I didn't want to be too elated about it, but I may some day award them.

Q. Did you at the same time, the same year you got rid of the monkeys get rid of the other animals, 1964? A. They had dwindled, I think the elk died. I think maybe the deer

had gotten away, there was no problem or it didn't come to me—whatever happened to them, they faded away, let's say.

Q. Do I understand then that the City did not receive any money or compensation or remuneration for any of the animals that were in the park they got rid of in 1964? A. None whatsoever. We didn't have much saleable merchandise.

Q. When you got rid of the animals, did you also get rid of the cages or did you retain the cages? [208] A. It wasn't—

Q. And the other equipment that was used with them? A. It wasn't of any value, the type cages we had there, and I don't think there was anything, I don't think the wire on those cages was worth reclaiming. If they did, the Public Works which took it down—there was not enough value, let me put it this way, for me to be concerned about it.

Q. Did I understand that the Public Works Department of the City of Macon in effect dismantled the zoo? A. Cleared it out on the request of the Board, to get it out of there.

Q. I see, so the Board made a request to get rid of the zoo; is that correct? A. Well, as they had from time to time because it was cluttering up the landscape.

Q. Did you have the dates that the Board made a request to get rid of the zoo? A. No, I don't. It was probably made verbally to me.

Mr. Jones: May I refresh his recollection?

Mr. Alexander: Yes, that's fine.

(Off the Record.)

The Witness: This was prior to the time. I knew they had requested it, as a matter of fact, they had requested it way back in my previous two terms that we move [209] this to Central City Park.

Q. Will you state again for us where this zoo was located on the park? A. Well, it was located on one of the streets through the park, I would say through the southwest of the center of what would be the center of that plat as near as I could pin it down, it occupied a little knoll right above the lily pond.

Q. Could you state where is that in relation to the present tennis courts? A. Oh, that's southwest of the tennis courts and from Nottingham Drive you might say it was directly behind it toward the river.

Q. It would be between Nottingham Drive and the river? A. Yes.

Q. Now, you made reference to a club house; is that club house on the park at the present time? A. Yes.

Q. And the club house was on the park during the time you were in office; is that correct? A. Yes.

Q. Will you state where the club house is located in reference to North Avenue and Nottingham Drive? A. It faces North Avenue south of where Nottingham [210] turns off North.

Q. Approximately how large is the club house? A. Oh, I would say it was, it contained one large room, three small across the front, and I have never been in the kitchen, so I wouldn't know what is back there. It is really just a large size dwelling you might say, and it has one large room across it, but it would be about the size of a ten room house.

Q. Is it made of brick? A. Brick.

Q. And how many stories does it have? A. One.

Q. One story? A. Yes.

Q. Does it have a basement? A. Not to my knowledge.

Q. What about an attic? A. I couldn't tell you about that.

Q. Do they have a garage? A. No garage to my knowledge.

Q. I see. Do you have any idea as to the size of the area

immediately surrounding the house that might be considered the yards of the club house? A. I couldn't pin that down because that's one of those things as I have stated that would be the Board of [211] Managers, we never have concerned ourselves with it.

Q. Is there a parking lot? A. There is a parking lot adjacent to it on the south side.

Q. Can you tell us approximately the size of that? A. Oh, it would take about 100 car capacity, I imagine.

Q. I see, now what year was the club house built? A. That I couldn't say.

Q. Was the club house on the property at the time you assumed office? A. Yes.

Q. Do you have any records of the City that would answer the question I just asked about the club house? A. I think maybe the Board of Governors have to my knowledge.

Mr. Jones: You said the Board of Governors, I don't recognize that term.

The Witness: I mean the Board of Managers.

Q. Does the City have any records which would show that? A. To my knowledge we have never been concerned with that club in any detail. I can't remember any point in my 10 years in office that it has ever come up about its operation. I have had no occasion to ever look at it.

[212] Q. So, you say that the City does not have any records which would give information about the club house?

A. To my knowledge it hasn't.

Q. Can you state for what purpose is the club house being used at the present time? A. It is commonly referred to as the Women's Club and I have always considered and the City has always considered that that was their operation and we were not concerned with it; and, as I have stated

before, I don't know of any occasion in my experience where one matter about the club house has been referred to.

Q. What do you mean when you say it was their responsibility? A. I mean as far as we knew they were the operators of it, it has been my understanding even though this may not be factually correct that the Board of Managers may have had some say so, but my understanding, my personal understanding has been that they built it, they operate it and that's as far as I have had any occasion to go back.

Q. It is your understanding that the Board of Managers built it? A. No, the Women's Club.

Q. That the Woman's Club built it? A. Yes.

Q. Now, when did they build it? [213] A. I couldn't say when that was built, I would be guessing and I might miss 10 years.

Q. Can you give us the basis for your statement that the Woman's Club built the house, the club house? A. Well, some various conversations with members of the Women's Club. I have had to appear there many times at different functions that some of those which are not identified as the Women's Club express themselves about the problem they had of getting money or try to build a Women's Club.

Q. I see, the City would have had to take some action in order for the Woman's Club to build a club on City property, would it not? A. I don't think so, I mean if I had been in office I wouldn't have had anything to say about it because that is the general approach that the City has had on this thing.

Q. What I am getting at, it would not have been possible for a private club to build a house on public or city property without permission of the City, would it? A. If they asked, to my knowledge, I don't know as they ever asked, the Board of Managers ever asked for any official paper on this club or not. I don't think we have it on record at the

City. We certainly don't hold the deed to it, I will tell you that.

Q. You don't hold a deed to the club house? A. No.

[214] Q. But that club house is located on this property known as Baconsfield; isn't it? A. It is.

Q. Tell us this, what is the official name of the group that is now occupying the club house? A. Macon Women's Club as far as I know, that may not be technically correct.

Q. Can you tell us where the headquarters of this club is, whether it is at the park or some other place? A. I only assume that that is their headquarters. I can't keep up with all of the women's organizations in Macon.

Q. So far as you know, the headquarters of the Woman's Club is the Woman's Club House there on Baconsfield Park?

A. So far as I know.

Q. Can you tell us the name of the president of the club? A. I cannot.

Q. Can you tell us the name of the vice-president? A. I couldn't tell you the name of one member right now.

Q. You cannot? A. No.

Q. Can you tell us the name of the person in the [215] club with whom you dealt in your various trips to speak at the club? A. No, that is covering too much territory. I couldn't identify some of those actually being a member of the club or something from their past knowledge or the club, and I certainly couldn't be specific enough to name a person, no.

Q. Let me ask you this, I believe you stated a few moments ago that you had been to the club on numerous occasions to speak during the time you have been in office? Is that correct? A. Yes.

Q. Were you invited there by someone? A. Yes.

Q. Who invited you? A. That I couldn't say because I usually—I was there Saturday night, but all that appeared on my appointment book is Macon Legal Secretaries As-

sociation, and as to who the individual was, I couldn't name them.

Q. When you say Saturday night, are you— A. This past Saturday.

Q. You are referring to Saturday, April 22, 1967? A. That's correct.

Q. You were invited there by a group known as the—what was the name of it? [216] A. Macon Legal Secretaries Association, not Macon, Georgia.

Q. They had a meeting there; is that correct? A. They had a convention, banquet.

Q. And did they receive permission from the City to have the banquet? A. No, I didn't know a thing about it.

Q. I see. A. Except what is on my book.

Q. I see, I understand then that you cannot give us the name of single person who is a member of the Woman's Club that uses the club house? A. No, I couldn't without—all I do is to be to keep a file to pull which would cover Woman's Club, but I wouldn't know who it was until I pulled it.

Q. How many members are there in the Woman's Club of Macon? A. I couldn't answer that question.

Q. Does the Woman's Club pay the City of Macon any money for the use of the club house? A. Never have to my knowledge or there has never been any discussion of it.

Q. During the time you were mayor, you never took steps to ascertain whether or not the club was paying any money for the use of the clubhouse; is that correct? [217] A. That's correct.

Q. Were you at all times aware of the fact that the Woman's Club was using that house? A. Yes.

Q. Were you also aware of the fact that the park was a public park? A. Yes, but I was aware of the fact that I didn't have much to do with it. It was controlled by the Board of Managers, by the Board that had always in my

experience, and it has been so long accepted in Macon that it was one of those points that I didn't feel I had to question anything.

Q. There is no doubt in your mind, is there, that the Woman's Club is a private organization, is there? A. No.

Q. Let me just ask once again, I don't want to misquote you, I understand that during your term of office that you have made numerous visits to the clubhouse; is that right?

A. Yes.

Q. Would you say maybe you have been there maybe 10 or 15 times during the time that you have been in office?

A. I expect I have been there but not to a Woman's Club meeting.

Q. Well, at the Woman's Clubhouse? [218] A. Yes.

Q. Now, during your numerous visits to the Woman's Clubhouse, there was some of those times that the Woman's Club was meeting; is that right or the Women's Club was meeting? A. No, I don't think I have even been to a Woman's Club meeting.

Q. These were meetings then of other— A. Other organizations.

Q. I believe you have given us the name of one organization. Can you give us the name of any other organization that has met there during the time that you have been in office? A. Georgia Milk Dealers Association.

Q. All right. A. On one occasion, several of the local associations of various types, I wouldn't remember their names or designations.

Q. I see, on your numerous visits to the club, did you at any time see any Negroes there as guests? A. I couldn't answer that.

Q. You don't ever recall seeing any, do you? A. Not off hand, no.

Q. This was during your whole time in office? A. That's correct.

[219] Q. To the best of your knowledge, did the Woman's Club ever pay any taxes to the City for the use of that clubhouse? A. No.

Q. Never paid any tax based on any kind of income? A. No.

Q. To the best of your knowledge? A. No.

Q. Do you know whether the Woman's Club ever charged groups for the use of the club house? A. I am quite sure they do, but I wouldn't know what it was.

Q. The City never received any of that income? A. No.

Q. Now, during the time that you have been in office, did the City of Macon have the occasion to make various improvements on the park? A. The only improvements that I might say that we actually—other than—well, this was in conjunction with a request of the Board of Governors, Managers, I called them the Board of Governors, we dumped some surplus dirt down there around a low place over toward Spring Street that use to be a little, almost a little branch that we filled in, and other than what from time to time in the normal operation of the park might have done something in [220] conjunction with the park. There has been no project as such improvement.

Q. Where was this area located in the park? A. It was a little low place between where the Women's Club is and Nottingham Drive.

Q. I see, approximately how much dirt fill did you place there? A. Well, it was all we had at the time, I imagine it was 100 or 2 truck loads, regular dump trucks.

Q. 1 to 200 truck loads; is that correct? A. Yes.

Q. And approximately what would that cost the City? A. I couldn't tell you because it was done just in the normal operation of the public works department which was included in the general budget and which there is no details.

Q. I see. A. Of accounting kept on it.

Q. The City had to purchase the dirt, though, didn't

they? A. No, I don't think so. I think that was some we fell heir to somewhere.

Q. Do you know where you fell heir to it? A. Not off hand, it could have been in the repaving of the North Avenue, Gary Highway over there that we had [221] some surplus dirt.

Q. What year was that that you filled in that area with 100 or 200 truck loads? A. Oh. '55 or '56.

Q. In addition to the fill that you just described, did the City at any time make other capital improvements on the park during the time that you were in office? A. I don't know of any that we made an appropriation for which would require if we were doing any project, there might have been a few things that might have been done in parks or public works which in their normal operation they can handle, but it wouldn't have been a project as such.

Q. I see. Who in your opinion would have detailed information relative to all of the capital improvements that was made on the park? A. I don't think there was any from the period 1953 to '59, there were no available funds for such capital improvements and the only ones that were made in that period were made out of the general obligation bond of 1956 and parks was not included in it.

Q. Let me ask this, are you saying then that you know as a fact that no capital improvements were made on the park during the time that you have been in office?

Mr. Jones: Are you talking about made by [222] anybody or by the City?

By Mr. Alexander:

Q. Made by anybody? A. Oh, now, there might have been some made by other people, but we made no appropriation for any capital improvement.

Q. The City made none? A. No, none during that period.

Q. Do you know whether or not there were capital improvements made by others during the time that you were in office? A. Well, it couldn't have been very big because other than you might say somebody scraping off this fill where the kids play baseball. It is not a real baseball field, but it is level ground.

Q. It was levelled during the time that you were in office? A. Yes.

Q. Who paid for that? A. I don't know, we dumped, we put the dirt in there. Now, who levelled it off, I don't know because I thought they were going to put some more dirt in there. This is my recollection and they didn't. I happened to leave town for two weeks or so and came back and it was that way. We simply were assisting in this particular job, [223] and I didn't think they had gotten it up to where it was out of the water, but it was and it was done, and I don't know. Our public works people told us that they said that is all that they needed.

Q. I see, and what year was that? A. That was about '55 or '56, I can get the years mixed up and there were some improvements on the tennis courts. To my knowledge there was nothing except just maintenance on that so-called zoo.

Q. Back to the basketball courts, how much dirt did you— A. Not basketball courts, just an open ditch that was there between the two places where they play baseball now.

Q. Baseball? A. Yes.

Q. Are you referring to the 100 to 200 truck loads that you referred to a few moments ago? A. Yes, same area.

Q. Same thing? A. Yes.

Q. What about the tennis courts, how much money was

spent? A. I couldn't, I couldn't say. I think the Macon Tennis Club did most of that. We may have assisted them in [224] the electrical department with the light connections.

Q. I see. Now, what about the streets and sidewalks there at the park? How much did the City spend for streets and sidewalks during the time you were in office?

A. We only had—during the time I have been in office, we only had one section which we kind of restored which is considered a public thoroughfare through there and other than that, there has been no sidewalks.

Q. What section was that? A. This was a roadway connecting up Nottingham Drive.

Q. Did it connect Nottingham Drive with something or was this on Nottingham Drive? A. With this street that goes in by the Women's Club.

Q. Is that North Avenue? A. No, it runs off North Avenue.

Q. I see, do you know the name of it? A. Lee Boulevard, it makes a turn into Nottingham Drive.

Q. And what did you do to that strip, resurface it? A. We restored it a little bit because the Board of Managers had cut it which they did sometime about, before I went in office in '53, I believe it was, and which they elected to do so.

Q. They elected to cut it? A. That's right.

Q. What do you mean when you say cut it? A. I mean take it out and cease to be a thoroughfare through there.

Q. All right, and the City restored it; is that correct? A. After a lot of conversation.

Q. What do you mean by conversation? A. I mean that the citizens on either side of it had been using it for some time and didn't like to travel the route to North Avenue,

and it gets to be regardless sometimes of what other people do, it gets to be a political question.

Q. What did the citizens use this for in the neighborhood? A. Just as a more direct route to North Avenue.

Q. From what point? A. From Nottingham Drive.

Q. I see, so they would use this as a thoroughfare to go from their homes it was? A. Yes, let's say it was a short cut to stay out of traffic up there.

Q. I see, so the City accommodated them by rebuilding that strip; is that correct? [226] A. Well, I don't know whether you would say it was exactly accommodation because we were faced on one side with the public who had been using it and were were faced with the Board of Managers who had a right to do what they did, but we did work out an agreement with them that we would put it back.

Q. What did that cost, cost to restore it? A. I couldn't tell you off hand.

Q. Do you have records with you that would reflect that? A. No, I don't know whether it could be defined because there is another question that we put it in, the public works put it in and it was not done by contract.

Q. Your public works department put it in? A. Yes, and it would be included in the general budget.

Q. Is it possible for you to get for us some information relative to the amount of time that the public works department spent in building that and the area of land involved? A. Well, it could be done by an engineer, but specifically identifying it, I don't think anybody in the world could do it.

Q. You wouldn't have any records in the City which would reflect the area that you rebuilt or resurfaced? [227] A. Oh, I think we could determine the area because the

engineer could probably identify it by the looks of it, where there is usually a break you can tell it.

Q. Let me ask you this, would you supply for us then at the earliest time convenient for you an estimate of the size of the area that was resurfaced and the cost involved?

A. Well, I think we could certainly get the estimate of the size of the break, but I am doubtful whether we could come close other than an estimate.

Q. An estimate as to cost based on the number of work hours? A. What it cost that particular year.

Q. And what year was that? A. I am not sure, probably it is on these records, but I know it was around '55 or '56, somewhere around there.

Q. I see. What is the total amount of money that the city of Macon spent for lights during the time you were in office, lighting of the park? A. Now, that I know we never would be able to determine.

Q. Would or would not? A. Would not.

Q. Why not, why wouldn't you? A. Well, except just counting the lights and saying—[228] because we had no lights in there except the, what would normally be street lights which cost us \$3 a month with the power company.

Q. I am referring to installation of lights now. What did the City of Macon spend for the installation of lights? A. We didn't spend anything on the installation of lights, unless it was on the tennis courts there were some that were furnished by the City.

Q. How many lights were installed on the tennis courts by the City? A. I couldn't answer that question. That's an overlapping thing.

Q. Would you say there were sufficient lights there on the tennis courts to enable a person to play tennis at night? A. Oh, yes.

Q. And these were installed by the City? A. Or the

Macon Tennis Club, I think they had coin boxes on them. I am not a tennis player and I couldn't tell you.

Q. Are you saying then that the tennis club may have installed some and the City of Macon may have installed some? A. Yes.

[229] Q. Do you recall what year the City installed them? A. I think they were there prior to my term of office.

Q. Are the lights still there? A. No, they may still be there, but I wouldn't know about it.

Q. So far as you know, they are there; is that correct? A. Well, I don't know whether they are or not. I am just observing in passing.

Q. Let me ask you this, do you have any personal knowledge that the lights which had been installed by the City were later taken down? A. We took some of the stuff and moved to Tatnall Square Park where we have other tennis courts.

Q. You say you took some of the stuff, you mean some of the lights? A. Some of the lights and some of the equipment which if the City engineer, I mean the city electrician if it was worth it, but I couldn't answer that question.

Q. Was all of the equipment taken from the park to put in the other park, what was the other park? A. Tatnall Square.

Q. Tatnall Square Park, was all of that equipment removed from Baconsfield to Tatnall Square Park? [230] A. We didn't have any equipment to move.

Q. What is it that you moved, let me go back a moment, what did you move from Baconsfield Park to Tatnall Square Park? A. I said there was a possibility that the city electrician if he needs it, he can cannibalize the other things that we are not using and do it, and he may have. I couldn't say.

Q. Did he move anything other than lights from Baconsfield Park? A. We didn't have anything else to move.

Q. All right, now, the lights that he removed from Baconsfield Park to Tatnall Square Park—

Mr. Jones: Wait just a minute, I do want to object to that because he has stated that simply as a possibility entirely without his knowledge, and you refer to lights which were moved.

Mr. Alexander: Let me rephrase the question.

By Mr. Alexander:

Q. Is it your opinion that lights were removed from Baconsfield Park to Tatnall Square Park? A. I don't think it would have been worthwhile unless the City electrician, as I say, wanted to cannibalize some particular thing.

Q. Let me ask this, what is the basis of your statement [231] that the engineer may have done that? A. Well, because I think if he had had such a need, he might have presented it, but in this particular instance and operation of the City, it was not one of those things other than getting anybody out of the park that was operating and we weren't in too much detail because we didn't have too much. We didn't have much except land that we had a title but not operational control.

Q. Let me ask this, what is the total amount spent by the City on basketball courts during the time that you were in office? A. Basketball courts?

Q. Yes. A. Nothing has ever been in the City budget.

Q. What about the baseball diamond or bleachers? A. No, the bleachers, those bleachers over there weren't built by the City, built by whoever was playing there.

Q. Did the City spend money in maintaining the bleachers? A. No.

Q. Did the City spend money in maintaining the tennis courts or baseball diamond? A. No.

Q. Or basketball courts? [232] A. Nothing.

Q. What about the tool sheds and what not that were on City property, what did the City of Macon spend for the maintenance of those? A. Very little, if anything. As a matter of fact, I don't know whether—the only one standing is that rock house that was in the park originally and I don't even know whether it was used as a tool shed or not.

Q. What do you mean? A. Or ever was.

Q. Describe this rock house? A. Well, it is a little one room rock house built down near the lily pool, never been in it, don't know what it is.

Q. Is that used as a tool house? A. I couldn't answer that. I just presumed it is for general utility house, but I wouldn't know what it was.

Q. Let me ask this, what does the, what was the yearly amount appropriated or spent by the City for the general upkeep of the park, by general upkeep I mean such things as keeping the grass cut? A. There was no appropriation ever made directly to Baconsfield Park in my term of office.

Q. Now, at no time during the time you have been in office, was there any money appropriated for the maintenance [233] of Baconsfield? A. No, we don't appropriate on any park with the exception of Central City Park and we don't do that in the case of the park part.

Q. You have had city employees, though, who have done work in maintaining it? A. That's correct.

Q. On the average how many city employees did you use per year in keeping up the park? A. I couldn't answer that question because it was only on a, you might say, in addition to all other parks that we had that they might clean up, prune or whatever they did in the same capacity that they did on other parks.

Q. How many persons did you have working full time there at Baconsfield Park? A. None full time that would be specifically assigned to that park, not as far as the parks committee or the executive department was concerned.

Q. Who is in charge of the Macon Parks Department? A. Mr. Cleve James is the head of the Parks Department.

Q. Is he here today? A. He is. However, the Parks Committee of City Council is also in that picture.

Q. Can you give us the names of the persons who are [234] on that committee? A. Well, the people that are on that committee have never been in the operation of this park on any budget. Sydney Pyles is chairman of that committee, but he hasn't been operational as far as Baconsfield Park is concerned because he hasn't been in there since the beginning of '64, so he would have no knowledge. Now, who the others are in other—I couldn't say.

Q. Can you give us the names of the persons who were on the committee between 1963 and 1964? A. That would be a matter of record, I can't give it to you off hand, off the cuff.

Q. Can you state whether Mr. James would head the Parks Department during that time? A. He was.

Q. All right, now, during 1967 approximately how many city employees have you had on the average in maintaining the park? A. In 1967 in Baconsfield?

Q. Yes. A. Not the first one.

Q. What about during the year 1966? A. No.

Q. You haven't had any during the year 1966? A. No or '65.

[235] Q. Well, now, what about the playground on Baconsfield Park, how many city employees have you had on the playground during the year, 1967? A. None. The playground that is on there is that school playground which I don't have anything to do with.

Q. Which school playground? A. Alexander 4.

Q. Alexander what? A. Alexander 4.

Mr. Miller: 3.

The Witness: Three, I am sorry.

Q. Alexander T-h-r-e-e (spelling)? A. Yes. No. 3.

Q. What is the name of the school, official name of the school, Alexander School No. 3? A. Alexander School No. 3.

Q. What kind of school is that? A. It's an elementary school.

Q. Is that a public or private school? A. It is public.

Q. Elementary school? A. Yes.

Q. Where is the school located? A. Right across Nottingham Drive.

Q. Opposite the park? [236] A. Yes, opposite.

Q. Does the school face Nottingham Drive? A. No, I guess you would have to say that it was cater-cornered, it is on North Avenue at the corner, opposite corner.

Q. And that park, this playground is used by the school; is that correct? A. That's correct.

Q. And is it also used by the public school system generally or is it limited to that one school? A. Well, I think most of them are open, whoever happens to go there.

Q. Now, how many city employees did you have working on the playground during the year 1967? A. On that playground?

Q. Yes. A. None.

Q. No school employee was assigned to the park? A. No, not to my knowledge. School employees, I wouldn't know about the school, but under our system, I mean the city does not have anything to do with the operation of the school system.

Q. Let me ask this, is the recreation department a part of the City of Macon? A. Yes.

[237] Q. That would come under your jurisdiction? A. That's correct.

Q. Did you have any member of the recreation department assigned who worked at the playground during the year, 1967? A. No, we stopped that in February, 1964.

Q. Let me ask this, did you have any employee of the recreation department who worked on the playground during the year 1966? A. No.

Q. Mr. Merritt, did you have the occasion to answer some interrogatories which the intervenors, E. S. Evans, et al. propounded to the City of Macon in December, 1966, January 1967? A. Yes sir, we did, 1966, December.

Q. Do you recall having answered those, I believe you answered them on January 6, 1967. Do you recall that, sir? A. I do.

Q. Let me read to you question 15 from the interrogatories which the intervenors filed. 15: "State the annual operating and maintenance cost of Baconsfield Park for each year from January 1 to December 1, 1966 inclusive." Now, I believe you answered as follows on January 6, 1967: "The City has no information on which to [238] base an answer to this question. This is a matter solely within the knowledge of the Board of Managers. No separate records were kept in connection with maintenance work done by the City employees. One employee of the recreation department of the City of Macon worked on the playground which was situated in the park and received a salary from the City in the amount of approximately \$1181.70 per year." Do you recall that answer? A. Yes, I remember the question.

Q. Do you recall having given that answer? A. That's right.

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Q. Now, do you still say that there were no employees of the recreation department who worked during 1966 on the playground in Baconsfield Park?

Mr. Jones: Was your question '66?

Mr. Alexander: Yes sir, January 1 to December 1, 1966.

Mr. Jones: Will you read question 15 then.

Mr. Alexander: Yes sir.

Mr. Jones: You haven't read the question.

Mr. Alexander: I read it once, and I will read it again. Let me read the question again to make certain we are clear. Question 15: "State the annual operating and maintenance cost of Baconsfield Park for each year from January 1 to December 1, 1966 inclusive."

[239] Mr. Shi: Each year?

Mr. Jones: That's one year.

Mr. Alexander: Well, I am reading the question as it is. This is the question as it was worded.

Mr. Jones: Excuse me, go ahead.

By Mr. Alexander:

Q. And the answer was given as I have just quoted?

A. Well, the answer that was understood and that we figured out as I understand was all the annual cost was when we were operating? Isn't that right?

Mr. Shi: That's right.

The Witness: All it ever had been there.

Q. Can you say, sir, whether or not during 1966 you did or did not have employees from the recreation department on the playground? A. The order that we sent out dated

in February or March of 1964 that every city department on whatever basis, they were going in whether to help out on request of the Board, that no city employee would be employed on that park, after this decision came down.

Q. Mr. Mayor, what decision are you referring to? A. Well—

Q. You say after the decision came down? A. Well, when resigned as trustee and we couldn't comply with the terms and we couldn't expend any public money.

[240] Q. Then as I understand it, you sent out an order in 1964 it was? A. Right.

Q. Advising the various city departments not to expend additional funds in Baconsfield Park, but notwithstanding that, you did have one employee who worked in the recreation department in 1966? A. No, our understanding was what it had cost us and we had had one which was a part time employee that had been on the payroll and I believe that was the average figure, wasn't it, Mr. Shi?

Mr. Shi: That's right. May I interpose here that your question, if you don't mind.

Mr. Alexander: All right, sir.

Mr. Shi: Because I assisted him in preparing that answer, and your question says for each year from January 1 to December 1, 1966, and all through here you have been using the years 1954 to 1966, and that answer relates to the period prior to 1964 which is covered by answer to No. 12 wherein we say no City funds have been expended directly or indirectly since June of 1964, and that each year was taken to mean the entire period, not just 1966.

Mr. Alexander: So the \$1181 is for the 10 year period prior to that?

[241] Mr. Shi: It is the average prior to the cessation date in February of '64.

By Mr. Alexander:

Q. Mr. Mayor, does the Alexander School still use the playground on the park? A. I am sure they do.

Q. The City at no time sent out instructions to the school system— A. No.

Q. To keep them from using the park? A. No, that wouldn't be in the prerogative of the City.

Q. What use does the City make of the park, do you know? A. To my knowledge none except during school hours, whatever activity they might have of that kind.

Q. Do they have recreational activities after school hours or do you know? A. I presume they do to some extent, but what I wouldn't know. I mean because all I am positive of is what had gone out from the City is that no one with any department is to participate in any maintenance work or even in an advisory capacity, recreational or otherwise on the property which is controlled by the Board of Managers of Baconsfield Park and that's February of '64.

Q. Now, during the time that school is in session, [242] do the teachers or staff members of the school escort the students over to the park? A. I can't answer that question, whether they do or whether they don't. I hope they do.

Q. Do you know whether the children are supervised at the time they are on the playground? A. I would think generally in the Bibb System they are supervised.

Q. Who would supervise them? A. Some member of the school faculty.

Q. During the period that the City had employees working at the park which is an average of \$1181 was spent, what did that employee do at the park? A. Well, I would presume that they would just act as the City's agent on

the ground to see that there was a little activity going on and also most of them, these part time workers on the playground are simply to look after the little ones and see that nobody gets hurt. I would not say that they were responsible for all of the activities at all because it would be beyond their capabilities.

Q. Did you have more than one person working? A. No.

Q. Just one person? A. Yes.

Q. And this person would supervise the children [243] playing on the playground? A. Not supervise, most of them don't. They usually—let's say an attendant or you might say a baby sitter.

Q. I see, so the person referred— A. That is my personal opinion.

Q. The person referred to then in answer to No. 15 interrogatory is someone who may have served as sort of a baby sitter to use your term; is that right? A. Well, I know that it can't be much more than that for what we were paying.

Q. And in addition to that, as I understand your testimony this morning, there were other persons who from time to time did general maintenance work on the park, is that correct? A. On that particular park, I would imagine some.

Q. What kind of maintenance work did they do?

Mr. Grant: What period are you inquiring about?

Mr. Alexander: I am referring to the period—

The Witness: Up to '64.

Mr. Alexander: —of time that Mayor Merritt was in office.

Mr. Jones: Well, that extends on up to today.

Mr. Alexander: Right.

The Witness: Well, as I have indicated in so

[244] many of my answers, Baconsfield didn't receive any more attention than some other park in the City, and what was done there was only done as part of the general work or on request of the Board of Managers, and that terminated in 1964. I don't remember the Board of Education ever requesting anything about this specific part of the park you are talking about, but at one time they did request or say they were going to do something, but they did it themselves and never even asked us about where they were going to put it.

Q. Who is that, who asked? A. The Board of Education or representatives of the Board.

Q. When did they ask you? A. The question if we would put that basketball court and we deferred our answer and they answered it by doing it themselves.

Q. So the basketball court was built by the public school system of Macon is that right? A. As far as my knowledge, we didn't do it. I know we didn't do it.

Q. But during the time that you have been in office, as I understand it then, you had various people from the parks department who would do general maintenance work on the park, things like cut grass and what not; is that [245] right? A. Just like they did in Third Street Park.

Q. Cut grass, did they plant flowers? A. They may have planted flowers.

Q. Would they do general maintenance work on the trees there in the park? A. I don't know to the extent they would do anything about trees and they certainly wouldn't have unless the Board of Managers asked them because we didn't get into the details of that.

Q. They have a pond on the park; is that right? A. Yes.

Q. They would clean the pond out when necessary; is that correct? A. I don't know. I don't know whether it ever needed it, but I don't know.

Q. Let me ask this, what about the trash; the City would remove the trash from the park, wouldn't they, when it needed it? A. Well, we remove that everywhere.

Q. And you do it at the park I mean? A. Yes.

Q. Mr. Merritt, does the City at the present time occupy, have possession of any buildings which are owned or controlled by the managers of Baconsfield Park? [246] A. None whatsoever.

Q. Does the City of Macon lease any building from the park? A. None.

Q. During the time that you have been in office, has the City of Macon ever rented any structure for \$25 a month from the Board of Managers or the park? A. We rented on that commercial part of the lease, I think we authorized \$300 a year for that old building which was the Tuberculin School, that's the only one we ever had any lease on.

Q. The City pays the Board of Managers \$300 a year; is that correct? A. That's correct.

Q. Would you describe the building that you are referring to, sir? A. Well, it's an old open air tuberculin school which was just one big room, I would say about 40 by 60 and one little anteroom. We made arrangements for the local club, Macon Civic Women's Club to set up a club there and which they on their own got various contributions and restored it enough to hold a few meetings in it, and that's the extent of it. That was in the commercial part of the park.

Q. I see, you say the commercial part, are you [247] referring to the land which is— A. Which is east of North Avenue.

Q. I see, which is directly across from park property; is that correct? A. That's right.

Q. Is that building still in existence? A. It is still in existence.

Q. The City as of 1967, in fact as of this date, is still paying \$300 a year; is that correct? A. We paid \$300 to the club and as far as I know that lease has never been changed.

Q. The City paid \$300 to the club? A. I don't know whether they paid it to the club, I can't answer that, it has been so long ago, but to my knowledge it hasn't been changed.

Q. The City paid \$300 to someone; is that correct? A. That's right.

Q. Does the \$300 go to the board of managers? A. I believe it does.

Q. Does it go directly from the City to the Board of Managers? A. I think, I believe I am correct on that because I did the preliminary conversation when they first went there.

Q. Let me ask this, does the City have a contract [248] with the Board of Managers or a lease with the Board of Managers for that yearly? A. I frankly don't know whether we have a lease or not. It was kind of a half hearted arrangement you might say.

Q. What was the year this arrangement was made? A. '54 or '55, it could have been either one of those years.

Q. Will you state for us what the building is being used for at this time, at the present time? A. I am not certain that it is still operating in the same manner, but it was—they called it the Happy Hour Club. It was a meeting these Macon Civic Women's Club held for the old people, 65 or better.

Q. Is this the same club that occupies the club house?

A. No.

Q. On the park? A. No.

Q. It is a different club; is that right? A. Yes, this was a young group of women or were when I went in there.

Q. What is the name of the group? A. Macon Civic Women's Club, Macon Young Women's Civic Club.

[249] Q. Does the Macon Young Women's Civic Club pay the City any money for the use of that? A. No.

Q. Does the club have its headquarters there in the building or is it elsewhere? A. Elsewhere.

Q. What is the address of the headquarters? A. I couldn't tell you.

Q. Can you tell us the name of the president? A. I couldn't tell you, all of my contemporaries in that club are out.

Q. Does the City pay for the upkeep and maintenance of that building? A. No.

Q. Who pays for the upkeep and maintenance? A. They have solicited, that was one of the agreements they went in there on, that they would get donations from business firms and others to keep it up, and as far as I know there hasn't been any other request except for us to keep people from breaking in over there.

Q. Did you comply with that request? A. We try, but we are not making much—

Q. How do you try to comply with that request? A. Well, by having police officers check it out because it is not occupied very much of the time, and it is [250] in a rather bad location with that woods over there just behind it to keep vandalism down.

Q. Does the Woman's Club pay any taxes for the use of that building? A. For this operation?

Q. For the building that— A. No.

Q. They pay no taxes? A. No, just a meeting house.

Q. Does the City maintain guards to provide police protection for the park itself? A. No, the city—nothing but patrol cars in the area.

Q. Patrol cars go through the park occasionally? A. I would think that they would.

Q. Now, does the City pay insurance on the park or any of the equipment on the park? A. None, never has.

Q. Never has at any time? A. No.

Q. What about the property you have just described which is used by the Young Women's Club, does the City have insurance on that building? A. No, the City doesn't have. I don't know who—

Q. Can you give us a valuation of that building? A. Well, unless it is used of a specific purpose [251] like it is being used, it might be worth 5 or \$6,000 for somebody to start on to do something with it, but it wouldn't be in shape to put a price on it commercially.

Q. Is that a brick building? A. Brick building.

Q. How many rooms? A. One little kitchen and another little room, and that's all there is to it, just a box like structure.

Q. One story? A. One story.

Q. Is Baconfield Park completely tax exempt? A. Well, not on the lease—

Q. I am referring now to the park? A. The part of the park, no.

Q. The park part is completely tax exempt? A. Yes.

Q. All of the equipment on the park is tax exempt? A. Yes, to my knowledge.

Q. To your knowledge is the clubhouse tax exempt? A. I couldn't answer that since we had our new study. We have just recently completely a tax re-evaluation program.

Q. When did you complete that, sir? A. We completed that last year.

Q. 1966? [252] A. Yes, in July, June or July.

Q. So far as you know—let me ask you this: During the time that you have been in office, do you know of any occasion which the City or the County or the State has taxed the clubhouse on Baconsfield Park? A. I don't know that.

Q. Now, about the trust income property which is across from the park, what is located on that property at the present time? A. Well, I can't say all that is located, I don't even know the northern boundary. There is a filling station, a drug store, several other buildings, but I wouldn't try to identify those which don't fall in my business.

Q. Can you name for us a few of the stores there? A. Well, Chichester's Pharmacy, Shell Oil off hand.

Q. What was the last one, sir? A. Shell Oil. Pure Oil used to be on it but it has been vacant for some time and there is a little ice cream—I wouldn't know the name of it.

Q. Would you say that those places constitute a shopping center? A. I would so consider.

Q. Now, is that property in the shopping center tax exempt? A. No.

Q. The persons who operate the business pay the taxes; [253] is that correct? A. That's correct.

Q. Is that property a part of the property that is controlled by the Board of Managers? A. That is correct.

Q. And that property is also the property that is vested in the City of Macon as trustee; is that correct?

Mr. Jones: Now or earlier?

By Mr. Alexander:

Q. Under the will, under Senator Bacon's will? A. Now, I don't know whether it was or not. I would have to have

a little legal advice because I had some down there I thought was but it wasn't near the river.

Mr. Jones: May I answer the question?

By Mr. Alexander:

Q. Let me rephrase the question and I might clarify it. The property which now consists of what you refer to as the shopping center? A. Yes.

Q. Was the property that the City of Macon held as trustee at least prior to 1964 at the time the Bibb Superior Court allowed the City of Macon to resign as trustee; is that correct? A. Well, I have never considered that we had anything to do with that which was east of North Avenue, across that street as far as Baconsfield is concerned it was [254] described separately and we never had any interest or control of it.

Mr. Jones: I will be glad to answer that question if you wish.

Mr. Alexander: All right.

Mr. Jones: The property that you are referring to was definitely included in the conveyance under the will to the City as Trustee, still, of course, merely as trustee. It has been that way continuously until the City resigned. They were separately described; that is, it was isolated from the park use property and designated for the production of income and placed under the control of the Board of Managers. Is that an adequate answer to your question?

Mr. Alexander: Yes, sir.

Mr. Jones: I am not speaking for the Mayor now, I am speaking from the record, the facts which I know.

The Witness: Well, I know this, we have never been concerned with it inasfar as operation.

Q. Let me ask this: Are you familiar with the house which at one time was occupied by a person by the name of Custis Nottingham? A. Only out of history books.

[255] Q. Do you know which house he occupied at one time? A. I don't think it is there.

Q. Has it been in existence during the time you have been in office? A. No, that comes under ancient history.

Q. Will you state whether or not the home that was occupied by Senator Bacon during his lifetime has been in existence during the time you have been mayor? A. No.

Q. Do you know the year that was removed from the park? A. I couldn't say.

Q. Let me ask this: Do you know what part of the property that his home was once located? A. Only approximately.

Q. Will you state for the record the approximate location of it? A. Well, it was to the west of North Avenue, but I don't remember exactly where.

Mr. Nabrit: Near the clubhouse area?

The Witness: Somewhere set back in there, but I never have tried to identify the exact spot.

Q. Do you know whether any of the buildings presently in existence on Baconsfield were in existence [256] at the time Senator Bacon died? A. I would say not.

Q. You think all of the buildings which are now on the park were built since his death? A. Well, there isn't but one, and I don't think there is any question about it.

Q. Do you know the year that building was constructed? A. No.

Q. Do you think that the building was built in say the late thirties or the early forties or can you give us an approximation? A. I mean just guessing I would say the thirties, in the thirties, but that would be as close as I would want to identify it.

Q. Do I understand then that the City at no time made any expenditures for the construction of the clubhouse or any other structure on the park? A. Not to my knowledge.

Q. What agency or department of the City would have records which would reflect whether or not the City made any contribution to the construction of the club house? A. Well, the City Clerk's office is the only office of record that the City has but I have never seen any [257] reference to it nor in the 10 years that I have been in office has it ever been brought up which I think it would have. I don't think we have ever had any right to question who built it, how they built it or what they did with it.

Q. Let me ask this, Mr. Mayor, as mayor of the City if you for any reason have the occasion to try to ascertain who built the park, who built the clubhouse on the park that the City of Macon was acting as trustee, what source would you use to obtain that information? A. Board of Managers.

Q. Mister Mayor, have you at any time held any prior position with the City of Macon? A. Not with the City.

Q. Have you held any position with the County? A. Not with the county.

Q. What about the State? A. I have been a legislator.

Q. What years? A. '39-'40.

Q. Do you have personal knowledge of any State legislation which has ever been enacted relating to Baconsfield Park? A. None except during this litigation and in reading and I don't remember the State ever having any.

Mr. Shi: He said State Legislature?

[258] The Witness: State Legislature, no, I don't know of any.

Q. What about a City ordinance? A. Very few and I would say that I haven't always lived with the exception of some years in school and service being away, that it has been generally accepted that the Board of Managers operated this Baconsfield Park, and there have been very few occasions other than being sure that we didn't do too much in this park over the years regardless of what years it was, that we haven't been particularly concerned as city officials with the operation of this park. It has been somewhat of secondary consideration because really we haven't been politically responsible, isn't that all right?

Mr. Jones: It sounds all right to me.

The Witness: There has always been an intervening authority.

Q. During the time that you have been mayor, do you have occasion from time to time to appoint various members to the Board of Managers of Baconsfield? A. If I have appointed one, I don't know it. I don't know whether I was supposed to, you know.

Mr. Jones: You were supposed to fill vacancies if any, but I don't think there were any.

The Witness: I don't think they ever had one [259] during my time.

Q. During your term of office, you don't recall there ever having been a vacancy on the Board of Managers; is that correct? A. If I did, it went this far, the Board of

Managers told me who they wanted and that's who we put on because that's how little we delved into the operation.

Q. During the time that you were in office, sir, were various easements granted to utility companies for access to Baconsfield Park? For example, Georgia Power Company? A. That didn't happen in my administration. The only—let's see, no, I can't remember any utility that we had to go in there.

Q. There are at the present times various, in existence various easements across Baconsfield Park; is that correct, power lines? A. There is one, and I don't think—it is across park land, I don't think it was ever considered, or you might say was in the park, that's the Georgia Power Company, and we do have a sewer easement in there, in that same land, big outfall sewer.

Q. You also have several tall towers, power lines? A. Power Company.

Q. That's correct? [260] A. Yes.

Q. And that's true of the land which is a part of the park also, isn't it? A. Yes and just adjacent to that we have a big outfall sewer in there.

Q. Who granted the easement for the sewer, was the easement granted to the City? A. The Board of Managers.

Q. The Board of Managers granted an easement to the City? A. Yes, certainly.

Q. Did the City pay for that? A. I don't think so, I hope not.

Q. Did the City use its power of condemnation to obtain this? A. No.

Q. Was that by agreement with the Board of Managers? A. You mean the power company.

Q. No, I am referring now to the sewer easement? A. That was by agreement.

Q. By agreement between the City and the Board of Managers? A. That's correct.

Q. Now, can you state whether or not at the present time there is a State or Federal Highway going through [261] part of Baconsfield Park? A. Interstate Highway 16.

Q. Interstate Highway 16? A. Yes.

Q. Now, can you state whether or not the City sold any land to the Highway Department? A. That was between the Highway Department and the Board of Managers.

Q. Did the City at any time give a deed to the Highway Department for the right of way of a highway through the park? A. I think we might have had to finalize it. The State Highway Department condemned it. I don't remember if we ever gave title. Yes, that came about after—we didn't have anything to do with it, that's right. They—

Q. Do you recall what year the Highway Department took steps to acquire title to the land through the park for the purpose of building that highway? A. I don't know, sometime in—that would only be a guess because they are just now completing it, and they have been about a year and a half on the job.

Q. Just now competing the highway? A. That's correct.

Q. Let me ask this: To the best of your knowledge did the City of Macon ever receive any funds as a result of [262] condemnation on the part of Baconsfield Park? A. None. In fact, they didn't even let me know how much they got for it.

Q. Who did not let you know? A. I don't know that they necessarily had to, but I don't know until this day what they got if they got anything on the condemnation.

Q. When you say they, are you referring to the Board of Managers? A. Board of Managers.

Examination by Mr. Nabrit:

Q. Do you know who put the playground equipment such as swings, see-saws, climbing bars, etc. on the playground at Baconsfield? A. No, that was there when I went in office, and I wouldn't know.

Q. When the school board constructed the basketball courts, what did they build there; did they asphalt it? A. They asphalted and put in some goals.

Q. Put in some basketball baskets? A. I don't know who built it, but I assumed that it was the School Board, the athletic facilities.

Q. Were there any other facilities that they set up at that time? [263] A. No.

Q. Just the basketball courts? A. As far as I know.

Q. How many basketball courts are there, do you know? A. I don't know.

Q. Has the City—

Mr. Grant: I am going to object to an extended interrogation by a second counsel for the intervenors. I think you ought to restrict it to one. He has gone on about two hours now, and a lot of us have other appointments. Mr. Alexander assured me that we were going to be through in time for a motion for a new trial I have got at 3:00 o'clock and Mr. Shi has got something at 2:30 and Mr. Willingham has got some kind of appointment, and I think if we are going to start over again with another counsel, we will be here indefinitely. Let's stick with the one that started it.

Mr. Nabrit: That will probably take longer for me to tell him my questions, but I don't mind.

Mr. Grant: Well, you have been doing a pretty

good job of telling him so far, but I just don't think we ought to go over everything else again.

By Mr. Alexander:

Q. Did the City install the storm sewer there on Baconsfield Park? [264] A. Storm sewer?

Q. Yes. A. There was an existing drainage line down there which was a natural drainage line, I don't know whether there is a storm sewer in there or not except a culvert underneath North Avenue. I don't believe there is a storm sewer in there.

Mr. Grant: The sanitary sewer.

Mr. Shi: He is talking about the sanitary sewer, I imagine.

The Witness: There is a sanitary sewer, a big outfall.

Q. That was installed by the City? A. By the City.

Q. Was the City paid for that? A. By who?

Q. Did anyone pay the City to install that? A. No, this is a big outfall that is a collector line that serves all of that area.

Q. What about the curbing there at the park? A. I don't know about that. That was there when I went there.

Q. Did the City spend any money to install a sprinkler system in the park? A. Not to my knowledge.

[265] Q. What about the gate which is at the entrance to the park; did the City spend any money for that? A. No, that was there when I went with the City. I don't know how it got there.

Q. I believe that gate entrance was built in 1956? A. If it did, we didn't build it.

Q. I see, I believe the gate has the year 1956 on it? A. Yes.

Q. What about paving around the park or the walkways or sideways or anything, did the City spend any money for that? A. Not to my knowledge, not in these years anyway.

Q. I see, to the best of your knowledge has there ever been any grant of any Federal, State or County funds for the operation of Baconsfield Park? A. No, and none have been requested either.

Q. What about any type of project performed by any Federal Governmental agency? A. Not to my knowledge, I wouldn't know of any.

Q. Were you serving as Mayor, sir, at the time the Board of Managers filed the law suit which is the subject of this pending case? A. No, I wasn't no, no.

Mr. Jones: That was filed during Mayor Wilson's administration.

[266] Mr. Alexander: May, 1963.

Mr. Jones: He went in office in November.

By Mr. Alexander:

Q. Will you state, Mr. Mayor, the name of the person who was mayor at the time this law suit was initiated? A. Mayor Edgar Wilson.

Q. Do you know his address, sir? A. Mailing address Mercer University, I don't know his home address.

Q. Does he live in Macon at the present time? A. Yes.

Q. Is he connected with Mercer University at the present time? A. Yes.

Q. Will you state what his position is? A. I don't know what his title is.

Q. Were you Mayor at the time the City of Macon resigned as trustee? A. Yes.

Mr. Alexander: That's all.

Examination by Mr. Jones:

Q. Mr. Mayor, a number of questions have been asked you with reference to the use of this property and the management of this property as if it were public property. Has [267] this property ever been considered by the City as a part of its domain, public domain under its use and control? A. Not in any administration that I have been concerned with. We didn't have that feeling exactly because we didn't have control of the property.

Q. Was the Title of the City of Macon for the limited purpose of acting as trustee to hold title? A. That was my understanding.

Q. Reference has been made to this surplus ~~dirt~~ that was used to fill in some low places and possibly ~~level out~~ the baseball diamond or something of that sort, when you refer to surplus dirt, are you referring to dirt that the City had surplus that it had to dispose of and simply disposed of at the nearest and best available place to get rid of it? A. That is the usual custom where we have some to move for some reason, we try to locate the closest place possible.

Q. Is that sometimes done to private property owners to get rid of the dirt? A. Well, wherever anybody will let us dump it. There was a time that it was a little difficult, but lately we are finding there is a great demand for it.

Q. This particular dirt, was that dirt that the City had to dispose of and get rid of? A. Yes, sir, that was dirt that we had either picked up [268] and wanted to get rid of.

Q. Mr. Mayor, reference has been made to the public school which has used this park for playground purposes. Does the City of Macon have any control at all over the public school system here in Bibb County? A. None whatsoever.

Q. Are you generally familiar with that set up? A. I am serving as ex-officio member of the board.

Q. You serve ex-officio by reason of the fact that you are mayor? A. That's correct.

Q. Do you happen to know that that is an independent corporation chartered by the Legislature in 1872 and operated continuously since that time by the corporation created by the Legislature independent of the City and the County? A. I very well know it, sir.

Q. Does the City actually contribute any tax funds for the operation of the public school or does the county contribute such as is contributed locally? A. The City does not contribute.

Q. Reference has been made to taxes, I believe you have stated that the so-called commercial part of this property or shopping center or whatever you call it is taxed and does produce taxation for the City? [269] A. Yes.

Q. And to the fact that the park has been exempt from tax, is a public charity exempt from property taxes in Bibb County and the City of Macon and generally in the State of Georgia? A. Same as other church property, Salvation Army.

Q. That has no relation to the fact that it may or may not be operated as a park or for any particular purpose, simply so long as it is operated for a charitable purpose? A. That's correct.

Mr. Jones: That's all the questions I want to ask him.

Examination by Mr. Shi:

Q. You were asked, Mr. Mayor, whether or not the City was paid to install this sanitary sewer line and outfall. Is the City ever paid for installing such sanitary lines and outfalls? A. You mean are we paid by somebody else?

Q. Right? A. No.

Q. You said that that line was placed on Baconsfield by agreement with the Board of Managers; is that correct?

A. Yes.

Q. When the City ordinarily installs a sewer line across [270] property which it owns in fee simple as part of its public property, would they have to consult with anybody about installing a sewer line? A. No, but we would in this case because as I have indicated, the Board of Managers has always insisted on their prerogative and even if we didn't we would have consulted with them to be sure we didn't get into any problem.

Q. You consulted with them because you figured they were the beneficial owners of the property? A. That's right.

Mr. Shi: That's all.

Mr. Grant: I don't have any questions.

Re-Examination by Mr. Alexander:

Q. Just 1 or 2 more questions in regard to what you have just said, do you, Mr. Mayor, consider the Woman's Club as a charitable group; I am referring to the club— A. The Women's Club?

Q. The Woman's Club or the Women's Club, whatever the title is, that occupies the club house on the property? A. In the same respect that the Exchange Club and the Rotary Club and other people who are or take civic projects of various kinds, yes.

[271] Q. In your capacity as ex-officio member of the Board of Education; is that the City Board of Education? A. No, county.

Q. County Board of Education? A. Yes.

Q. Do you have here in Macon a separate City Board of Education? A. No, never have.

Q. In your capacity as ex-officio member of the County Board of Education, do you attend meetings of the board?
A. Yes.

Q. Are there any Negro members of the Board? A. No.

Q. Are you familiar with the composition of students at the Alexander School that you referred to earlier this morning? A. Not specifically.

Q. Do you know of your own knowledge there are any Negro students in that school? A. I don't know if they are or if there are not. They are in some 15 or 20 or more.

Q. Well, let me ask this, would you say to the best of your knowledge as an ex-officio member of the board that the Alexander School that you referred to, I believe as [272] Alexander No. 3? A. Yes.

Q. Is a predominantly white school? A. Predominantly white.

Q. If not totally white? A. It would be predominantly because it is a neighborhood school.

Q. The neighborhood surrounding Baconsfield Park is a white neighborhood would you say? A. Yes.

Q. Is your answer yes? A. Yes, on all three sides you might say that are accessible.

Q. The fourth side being the side of the river; is that correct? A. That's right.

Mr. Alexander: We have no further questions.

[273] MR. CLEVELAND JAMES, Witness called by the Interveners, being first duly sworn, testified on

Examination by Mr. Alexander:

Q. Will you state your full name, sir? A. Thomas Cleveland James.

Q. And what is your address, Mr. James? A. 1361 Waverland Drive.

Q. Is that Macon? A. Macon.

Q. What is your present title or position, Mr. James? A. I am superintendent of parks and cemeteries for the City of Macon.

Q. How long have you occupied that position? A. Oh, about 48 years.

Q. Were you holding the same position that you now hold at the time that Senator Bacon died? A. No.

Q. When was your first contact with the park known as Baconsfield Park? A. Well, it was when Mr. Glynn Toole was mayor, the last term he was in office.

Q. Will you spell the Mayor's name, sir? [274] A. Glynn Toole.

Q. How do you spell Toole? A. T-o-o-l-e (spelling).

Q. Do you remember what year that was? A. No, not exactly, it was around about the Second World War is when it was.

Q. Will you state for us briefly what your duties are? A. What?

Q. Will you state for us very briefly what your duties are in the position that you hold? A. I built all the parks practically and I just took over the cemeteries about 7 or 8 years ago and I have to cut the grass and tend all the playgrounds now, four cemeteries and 75 parks.

Q. 75 parks? A. Including the small parks and everything.

Q. I see, you are the general superintendent of all of the parks? A. That's correct.

Q. Now, in your capacity as parks superintendent have you served as superintendent of Baconsfield Park? A. That's right.

Q. Can you state the year that you first exercised control as superintendent of that park? [275] A. I don't know

what year, Glynn Toole was Mayor, the exact date, I don't know. It was just a wilderness then, just started from scratch.

Q. I see. Will you state whether or not during 1967 you exercised control and supervision over Baconsfield Park, during 1967?

Mr. Jones: May I interrupt, Mr. James does not hear very well, and you asked about the year '67 and I hope he will be certain to hear your question.

The Witness: What did you say? Talk a little louder.

Q. Let me rephrase the question. Have you during the year, 1967, exercised supervision or control of Baconsfield Park? A. No.

Q. Did you during the year, 1966? A. I don't think so, I think it has been about four years ago when they give it up.

Q. Do you recall whether or not you exercised control during the year 1964? A. I don't think so, I think it was before that, I am not sure about the date now.

Q. Do you recall why you ceased exercising control of the park? A. The Mayor told me not to work over there any more.

[276] Q. Did he give you any reason why? A. I didn't ask him.

Q. What in effect did the Mayor say? A. Nothing, that's all he said, and I said, "All right, that ends it."

Q. What did he say? A. What did who say?

Q. The Mayor? A. He just told me not to work on the Baconsfield Park any more that we were through with it.

Q. And prior to the time that you received these instructions from the Mayor, you would exercise general supervision of the park; is that correct? A. That's right.

Q. Now, did you have persons under your control working on Baconsfield Park? A. Yes.

Q. How many persons did you have? A. Well, at different times, sometimes I would have one and sometimes 4 or 5 and sometimes—just different times according to what I had to do, just like on the other parks. I operate them all the same way and the cemeteries too.

Q. Do you have persons who were assigned specifically to Baconsfield Park? A. Do what?

[277] Q. Did you have persons who were assigned to this specific park? A. No, no particular man at all, only one man that kind of watched around there, tended to the monkeys and the zoo and one thing and another, and that is the only one that had a regular job there.

Q. And what was his name? A. Oh, he is dead now, I have forgot what his name was, he has been dead several years.

Q. How long did he work there at the park? A. He did?

Q. Yes, sir. A. He worked about four years, I imagine.

Q. And he was a full time employee? A. Yes, sir, he was.

Q. Did you replace him after he died? A. No.

Q. What were his duties, sir? A. Whose duties?

Q. The person that you referred to that is now deceased?

A. Well, he just took care of the zoo and cleaned up around there and kind of a watchman more than anything else to keep people from stealing anything.

Q. I see, did he do general maintenance work on the park; did he cut grass? [278] A. He didn't no.

Q. You had other persons to do that? A. Yes sir.

Q. These other persons, did they also maintain the club house? A. No.

Q. They didn't have anything to do with that? A. They didn't have anything to do with the club house.

Q. What would they do in addition to cutting grass? A. That's all and fertilize and plant winter grass in the winter

time, just general upkeep, I did all the planting years ago and just general upkeep, maintenance, that's all we did.

Q. At the time that you took over the supervision of Baconsfield Park. I believe you stated that it was a wilderness; is that correct? A. That's right.

Q. What did you do to build it to its present form? A. I had to go in there and go to work tearing it out and laid off a park in there.

Q. Can you be more specific, exactly what did you do to change it? A. Cut all the underbrush out, that's all, and cleared it up and laid off some paths through there and dug some [279] lakes and just made a general park out of it, paths and bridges and that was it.

Q. How did you build the paths, sir? A. Just cleared them out with some men, cleared out the undergrowth.

Q. Did you pave the paths? A. No, no.

Q. Did you lay bricks in the paths? A. No.

Q. How did you— A. Just dirt paths.

Q. Just dirt paths? A. That's right.

Q. And what about streets in the park, did you— A. Didn't have any? You mean the one highway through there, that through highway? No, I didn't do that. I laid them off, but I don't know who built those things. I was tending to other work.

Q. You say you laid off the highway? A. To show where it was going through there, yes sir.

Q. What do you mean when you say you laid it off, sir? A. What?

Q. What do you mean when you say you laid it off? A. I just showed them where to put it, that's all.

[280] Q. I see, and who did you show where to put it? A. Some fellow come up there and said he wanted to build a road through there, I don't know who it was, I have done forgot who it was.

Q. Was he a City Employee? A. No.

Q. Did he work for some private company? A. He didn't work for me.

Q. Did he work for some private company? A. No, I don't know, I didn't ask him.

Q. In addition to cutting the trees and etc. down, what else did you do to build up the park? A. That's all there was to it and put out shrubbery.

Q. Did you build any ponds on the park? A. Just dug out the place and the water come right on in it from a spring.

Q. I see, did you pave or cement the pond? A. No, dirt bottom.

Q. Just dug a hole; is that correct? A. That's correct.

Q. How large a hole did you dig? A. Oh, about half as large as this building, I reckon. How deep it is?

Q. Yes. A. About four feet deep.

[281] Q. About four feet deep? A. That's right.

Q. Approximately how— A. One of them is about four feet and the other one is about two feet.

Q. You had two ponds? A. Two small ones, yes, a little bigger than this room the two of them.

Q. I see. Did you use machines to dig out these— A. No.

Q. Ponds? A. No, just a shovel and threw it out to one side.

Q. I see, did you put benches or seats there in the park? A. The Board of Managers did, they bought some benches later on and put in there and we made a few out of stone to start with.

Q. Who made those, sir? A. We had a man with that crowd putting them in there.

Q. You mean the City had someone to put them in? A. No, it was PWA labor.

Q. Beg your pardon, sir? A. PWA labor.

Q. PWA labor put in— A. WPA.

[282] Q. WPA? A. Yes.

Q. Put in benches? A. Yes, just a few stone benches, that's all.

Q. Now, what year was that, sir? A. I don't remember, about, the same, when Mr. Toole was mayor.

Q. Now, did the people from the WPA do other work there in the park? A. About it, clean up, like I said, cut the underbrush down, and that's all there was to it and they built a few little benches.

Q. Were you in control or did you supervise the WPA workers? A. Yes.

Q. I see, and what about things such as tool sheds or what not, did the WPA workers build those? A. Built what?

Q. Any tool sheds? A. Well, we had one tool house and that's all, the kids would get out of the rain up under it was the main thing, and the builders could get out of the rain too, we didn't have many tools there.

Q. But this tool shed was built by WPA? A. No, we hired a man to do that.

[283] Q. Beg your pardon, sir? A. We hired a brick layer to do that.

Q. Who hired the brick layer? A. He was on my payroll.

Q. And you paid the brick layer from City funds? A. That's right.

Q. Did the WPA crews build any other structure on the park? A. No, that's all.

Q. I see, approximately how long were the WPA crews there on the park? A. Oh, I have no idea.

Q. Would you say as long as a year? A. Well, probably so, I expect it was.

Q. Would you say perhaps two years? A. I don't think so, it wasn't that long.

Q. Could you state perhaps a year and a half? A. See, they had them scattered all over Macon just working all of them all over Macon, just took some and put over there.

Q. I see. A. We had some down at Central City Park and the Stadium and Tuff Springs around school yards and every which direction all around Macon we had them, and I brought some over there and went to work on that.

[284] Q. Were these persons from the WPA or the PWA? A. WPA.

Q. WPA? A. Yes.

Q. Now, did the crews from the WPA do any work on the tennis courts? A. On the what?

Q. Tennis courts? A. Not as I know of, I didn't have anything to do with that.

Q. Did they have tennis courts? A. The recreation department probably did that.

Q. Did they do any work on any of the basketball courts? A. Not under me they didn't.

Q. I see. A. I didn't have a thing in the world to do with them on that, the recreation department did that.

Q. I see. Will you state whether or not at the time the WPA was there on the park that the house which is now called the Woman's Clubhouse was in existence? A. No.

Q. It was not in existence? A. No. I don't remember that now. I didn't have a thing in the world to do with that house, building the [285] house.

Q. I see. Well, in what year was that clubhouse built? A. I couldn't tell you that.

Q. It was built when you first went to the park, was it? A. No, no.

Q. So it was built since then? A. That's right.

Q. And you had general supervision of the park at the time it was built; is that correct? A. That's right.

Q. You don't recall which year it was built? A. No.

Q. Can you tell us who was mayor at the time that club house was built? A. Glynn Toole.

Q. Mr. Toole? A. Glynn Toole was still mayor.

Q. Can you tell us the last year that he served as mayor? A. No. Let me see who followed him, I think it was Charlie Bowden, I think he was the next mayor. He was there 10 years and then I don't know who come after him.

Q. I see, what year did you go to work for the City, sir? [286] A. 1915

Q. And what did you do when you first started to working for the City? A. What did I do?

Q. Yes sir, what was your position at the time? A. Superintendent of parks.

Q. Superintendent of parks? A. Yes sir.

Q. That is the only position you have ever held with the City of Macon; is that correct? A. That's right, not recreation, I didn't have anything to do with recreation, just parks.

Q. Let me see if I understand this now. Approximately which year did you first start working on Baconsfield Park? A. What year?

Q. Yes sir. A. I couldn't tell you.

Q. But it was not during the first few years that you were in office; is that correct? A. Who?

Q. It was not during the first few years that you were in office? A. No, no, gracious, no.

Q. How long had you been working on the park prior to [287] the time that WPA started working there? A. For the City?

Q. Yes. A. Since 1915.

Q. No, what I mean is how long had you been working at Baconsfield Park? A. I didn't work at all.

Q. Approximately how long had you been working on Baconsfield Park prior to the time that the crews from

WPA started working on the park? A. The same day I started.

Q. I see, you started working at Baconsfield the same time that the WPA started? A. Toole told me he was going to send some men over there and to start a park and that is what I did.

Q. I see. Now, can you tell us who built the Woman's Clubhouse? A. No, I don't know.

Q. Did you see the Clubhouse as it was being constructed? A. Yes.

Q. Were they city workers? A. I saw them when they tore the house down, Mr. Bacon's house where they tore it down, where the house is now, they tore it down and built the club house there.

[288] Q. Was Senator Bacon's family home on the same spot where the club house is now? A. That's what they say, now, I never had seen it, they said it was his home.

Q. They said his home was on the same spot? A. Right where the club house is now. That's what they say. I never had seen Mr. Bacon. He died before I ever knowed anything about the park.

Q. And you saw them while they were building the club house there? A. Oh, yes.

Q. Were they city employees building it? A. No, no city employees.

Q. Was it a contractor? A. I don't know.

Q. Were there a large number of workers? A. Well, about 5 or 6 or 10 probably to have the house built, brick layers and carpenters, there wasn't too many.

Q. Did any of your workers attend to any of the fills there on the park? A. Do what?

Q. Did any of your workers attend to any of the fills there on the park, such as the playground or the tennis courts or anything like that? [289] A. No. I didn't have anything in the world to do with that.

Q. You didn't roll the land or anything there on the tennis courts? A. No.

Q. Or the basketball courts? A. No, never touched it.

Q. Who did that, sir? A. The recreation department, I reckon, it was out of my jurisdiction. I didn't have a thing in the world to do with that.

Q. Can you give us an idea of approximately how many hours your employees spent there at Baconsfield Park?

A. No, no idea, we didn't keep any separate count of no park or no cemetery or no anything, it all goes in one lump sum, and I get a certain appropriation for the parks, certain for the cemeteries, certain for Central City Park, I have got three different ones, and it is everything combined in each department, what I spend in cemeteries it goes in that department, and the parks goes in that one, nothing was itemized, no separate park.

Q. I see, can you give us some idea of the number of hours your employees would work at Baconsfield Park, just a rough estimate? [290] A. No, when they worked, they worked nine hours.

Q. Nine hours per day? A. Yes.

Q. And how many employees did you have working on the average day? A. Oh, sometimes I wouldn't have any, sometimes I would have one and sometimes two and sometimes five, and when they get through they are off and gone somewhere else. I didn't try to keep up with them at one particular place.

Q. I see, now, what about the fellow who is now deceased who worked full time attending to the zoo. How much did you pay him? A. Oh, then I think he was making about \$30 a week, something like that.

Q. And I think you said he worked about four years; is that correct? A. I imagine something like that.

Q. Now, were you supervising the park at the time that this woman's clubhouse was completed? A. Yes sir.

Q. Who moved in after it was completed? A. Who moved in?

Q. Yes sir. A. Nobody moved in, just had a club and had meetings there.

[291] Q. Had a meeting there? A. That's right.

Q. Was that under your supervision and control? A. No, I didn't have a thing to do with it.

Q. Who controlled that club house? A. I don't know. All I did around the club house was keep the grounds up in front and back there, that's all. As far as the house itself, I didn't have nothing to do with that.

Q. What is the amount of appropriations for your department, current year? A. Now?

Q. Yes sir. A. Well, it's about \$80,000.

Q. \$80,000? A. Yes.

Q. What about 1962, what was the appropriation of your department? A. I have no idea.

Q. You don't recall, sir? A. No.

Q. Would you say it has increased over the years? A. Oh, yes, see, I have taken over more now. See, I have even got highways now to keep up, and, of course, as the years go by the more it adds to your work.

[292] Q. I see, can you give us the approximate amount of your budget during the year in which this club house was built? A. No, I have no idea. I make my appropriations from year to year, make it out, and if they see fit, the finance committee sees fit to give it to me, I get it; and if they don't, I don't. That's all.

Q. Well, let me ask this. Which department of the City has had control or supervision of the Woman's Club house? A. I have no idea, nobody in my department has.

Q. You don't know who has control? A. No, I sure don't.

Q. Who is in charge of the recreation department for the City of Macon? A. Now?

Q. Yes sir. A. Well, Mr. Bob Wade is chairman and Patat is the superintendent of it, of the playgrounds.

Q. What is the last name? A. Patat.

Q. Spell that, sir? A. P-a-t-a-t-t (spelling).

Q. What is his first name, sir? A. I don't know, his office is at the city hall.

[293] Q. And what is his title? A. Superintendent of recreation.

Q. Superintendent of recreation? A. Yes sir.

Q. Did you have the responsibility for the installation of any of the lights on Baconsfield Park? A. No.

Q. What about any of the equipment such as swings? A. That's under playgrounds, that wouldn't come under me at all.

Q. You had nothing to do with any of those? A. No.

Q. Did you ever have flower displays there at the park or gardens? A. No garden, the whole thing was beautiful everywhere no one spot, it was all over the place.

Q. I see, approximately how much would you estimate that your department spent for flowers there in Baconsfield Park? A. Mighty little, I raised most of them.

Q. You raised them? A. Yes, and people gave them to me, just go out in the woods and get wild azaleas and put out there and give them to me.

Q. Where did you raise them, sir? [294] A. I had a green house over there.

Q. City green house? A. Yes.

Q. Where is the City green house located? A. It is not located, it is down. It rotted down.

Q. It rotted down? A. Yes.

Q. But at the time it was in existence you would raise them; is that correct? A. That's correct, we bought some, we didn't buy so many. A lot of people would give us things to put over there.

Q. What else did they give you besides flowers? A. Well, a lot of people would give us things to go in the zoo

and a lot of things like that. Mr. Happ was interested in that park and he used to buy a lot of stuff and give me.

Q. Who was that? A. And Mr. Murphy.

Q. Mr. Murphy? A. Yes.

Q. He would give you a lot of things? A. He bought a lot of things for the zoo, ducks and pheasants and one thing and another.

Q. Who is Mr. Murphy? [295] A. He is dead.

Q. Who was he, sir? A. Murphy, Taylor and Ellis real estate.

Q. Do you have any idea of the amount of money spent by the City for flowers? A. No, it wasn't too much.

Q. Can you give us an estimate, sir? A. Well, I would say about everything complete because other people gave us so much and other things, I would say a rough estimate was about \$5,000 maybe.

Q. \$5,000 per year? A. No, the whole business.

Q. The total? A. Yes.

Q. During which year, sir? A. During all the years.

Q. From what time to what time? A. When we started.

Q. Do you recall the year? A. I just told you when Mr. Toole, Mr. Glynn Toole was mayor, I didn't recall the date, no.

Q. And that would be from the time you started up until what year? A. That's right.

Q. Until what year, sir? [296] A. Until I quit 3 or 4 years ago, about 4 years ago.

Q. I see, now, what about the money the City spent for fertilizer? A. Well, the Board of Managers got that, paid for that.

Q. And what about grass seed? A. Same thing.

Q. And what about shrubbery? A. They paid, they bought a lot of that, a lot of trees. That's what I say, the City didn't spend too much, it was given to us and got out in the woods and got.

Q. I see, and once the Board of Managers purchased that, the City would plant them; is that correct? A. That's right.

Q. And the City would cultivate and maintain the flowers and shrubbery, etc.; is that correct? A. That's correct.

Q. During the time that you had the WPA crews, did you deal with particular persons at the WPA? A. Did I deal with them?

Q. Yes. A. Sure, I was working them all the time all over Macon.

Q. Who was in charge of the WPA crews? A. Oh, I don't know, the headquarters was down there [297] on Cherry Street. They changed around so much. I was working about 600 of them all over Macon, everywhere.

Q. Who was the person who was generally in charge of them? A. Well, they changed engineers, they had an engineer come one time from Atlanta and send another man down and here they go, just like that, every time I would go down there there would be a different person down there. All they would do is send the men over there and I worked them.

Q. I see, you would deal with the engineer who was in charge; is that correct? A. He was on the WPA himself, engineer.

Q. And you would deal with him; is that correct? A. That's right. All he did was furnish me the men, and I did the work.

Q. Do you recall the name of this person you dealt with? A. No, I don't.

Mr. Alexander: We have no further questions.

Examination by Mr. Jones:

Q. Mr. James, the WPA that you refer to, I believe I am correct in my understanding that they were trying to find work? A. That's right.

[298] Q. For a large number of people at that time? A. That's right.

Q. And the City under your jurisdiction helped them find the work? A. That's right.

Q. Did you or the City have anything to do with paying them? A. No, we didn't pay them anything.

Q. You did select the places where the work was available? A. That's right.

Q. Was that limited to parks or did it include all sorts of properties? A. Anything, anything, tear buildings down at Central City Park, do anything you asked them to do.

Q. Did it extend to school grounds, for instance? A. I didn't have anything to do with school grounds, at one time I did.

Q. I am talking about the WPA now? A. Yes, I am talking about WPA, only time I worked them on the school grounds and that was at Gresham High School, I got them to tear a wall down for me, and that's all.

Q. And is it generally true that the WPA was just used by you wherever you could find some work for them to [299] do? A. That's right.

Q. And that was the policy of the program at that time? A. That's right.

Q. Now, you referred to the recreation department having jurisdiction over certain things and doing certain things; do you know any—did you have anything whatever to do with the recreation department? A. Not a thing.

Q. Do you simply mean to say that you had nothing to do with the playground features of it? A. That's right.

Q. Do you know who did, whether the Board of Managers or private concerns? A. No, I don't.

Q. Or the public? A. No, I don't.

Q. You just lump all of that under the head of recreation? A. That's right.

Q. Do you know whether you are talking about the recreation department of the City of Macon or just recreation supervision generally? A. I know one thing, I know I didn't do it, I just [300] took it for granted they did it.

Q. In other words, you are not familiar with anything in the recreation department? A. That's right.

Q. Anything that they did? A. That's right.

Q. You just know you didn't do it? A. That's right. I was too busy tending to my own business. I couldn't tend to theirs.

Mr. Jones: I think that's all that I have.

Examination by Mr. Shi:

Q. Mr. James, during this time when you said something about exercising control and supervision over the park? A. Yes.

Q. Did you take a good many of your instructions from somebody other than the City? A. No.

Q. You didn't have any instructions from members of the Board of Managers? A. Oh, yes, sure, sure, I thought you meant somebody in the office, yes, sure, they controlled the park.

Q. Who dictated where the shrubbery was to be planted? A. Well, I did when they built the park and then I got to fixing up around the front of the club and behind [301] there, Mrs. Dunwoody did.

Q. Mrs. Dunwoody? A. That's right.

Q. Was she a member of the Board of Managers? A. Oh, yes, and she always bought a lot of bulbs and I put them out over there.

Q. Now, you were talking about the purchase of shrubbery, and you said the Board of Managers purchased the

fertilizer? A. That's right, and shrubbery too, a lot of it and trees.

Q. And they purchased some of the shrubbery and a lot of the trees? A. Yes, sir, they sure did.

Q. And they dictated where they wanted it put? A. Where they wanted to put it, that's right.

Q. Now, during a portion of this time while you were planting this shrubbery and maintaining the park were you working for the Board of Managers as well as for the City of Macon? A. Well, the City of Macon was paying me, but they had jurisdiction of the park.

Q. Did you receive any pay from anybody other than the City of Macon? A. Yes, sir, they paid me, not a regular salary, but [302] they give me money at different times.

Q. The Board of Managers gave you money for particular work that you did? A. Just general work, nothing in particular, everything I did over there. They didn't give me a regular salary now.

Q. And on or about the early part of February of 1964, were you instructed by the City of Macon to terminate all work on Baconsfield? A. Exactly what date I don't know, but I was up at the City Hall one day and the Mayor, Mr. Merritt said, "We will have to stop work over there at Baconsfield Park," and I said, "All right, that ends it."

Q. And did you get all of your equipment out from over there? A. I didn't have much over there to get out, I was ready to move in five minutes.

Q. You were ready to terminate your connection in five minutes? A. It didn't take me but five minutes to get away.

Q. And as far as you know, have any of your employees rendered any services in connection with Baconsfield Park since that date? A. Not a one, not under me.

Q. And you no longer have any connection with the Board [303] of Managers? A. Not a bit.

Q. Did the Board of Managers approach you about working independently for Baconsfield Park? A. Yes sir, as well as I remember, Mr. Charlie Newton did, wanted to know if I could work over there and kind of supervise it after my work hours. I told him I would have to find out.

Q. Did you find out? A. I sure did, and the Mayor told me I couldn't do it, and I said, "All right." I said, "Can I do it?" and he said, "No." and I said "All right."

Q. In fact, did the mayor tell you you could either work for the Board of Managers or the City of Macon? A. That is what he meant, he didn't say that.

Q. Now, some of this control and supervision that you talk about exercising? A. Yes.

Q. Was at the direction of Mrs. Dunwoody and other members of the Board of Managers? A. Oh, yes, we discussed it together, you know, and decide on this, that or the other, and that is the way we got through. They did a lot of buying, they bought a lot of stuff.

Q. Now, Mr. Merrit hasn't ever been out there and [304] told you where to plant a camellia, has he? A. Never told me to plant anything.

Q. How about Mr. Sydney Pyles? A. No, no.

Q. Or any other member of the Park Committee of the City of Macon? A. No, not a thing.

Q. Did they ever check on how many hours your men were putting out there? A. No, never questioned me a bit.

Q. In no way? A. No way.

Q. Directed you in your work out there? A. No, sure didn't.

Q. If you needed a decision, you went to the Board of Managers? A. Yes.

Mr. Shi: I believe that's all.

Re-Examination by Mr. Jones:

Q. I do have one more question. You spoke of \$80,000 appropriation for the current year, I believe that is for parks, highways, cemeteries? A. No, cemeteries is separate, it means the highway, I am keeping up Second Street and out here by the monument, [305] I mean the Indian Mounds, and now I am figuring on getting the 16 Highway up there.

Q. At one time you referred to 75 parks in the City? A. That includes all the little small parks, Mulberry and so on and so forth, you know, and Poplar, taking it all in whole, it would average about maybe about 30 real parks.

Q. About 30 real parks? A. That's right.

Q. And in prior years your appropriation for parks was distributed someway between all of the parks? A. That's right, there was nothing itemized for any particular park wasn't, just like my cemeteries, I have got four cemeteries, each one is not itemized. It has got a lump sum to carry them all on. Now, this money includes keeping up highways and also 40 playgrounds, I have got to do that out of \$80,000 too.

Q. Anything else included in the \$80,000? A. I think that's about it, and that means equipment too now, fertilizer and shrubbery and labor and everything.

Q. All salaries of that department? A. That's right.

Q. Does that include your salary? A. That's right.

[306] Q. And all of your labor? A. That's right, and equipment, tractors and gasoline and everything.

Q. Have you any idea how many days out of the year you would do anything at Baconsfield Park or would it be 3 or 4 or 500, I mean 3 or 4 or several hundred or have you any idea how many days out of the year? A. No, as I said, sometime I wouldn't work any over there and sometimes one and sometimes five and sometimes 6 and 7, and when they got through, off they went somewhere else.

Mr. Jones: That's all.

Re-Examination by Mr. Alexander:

Q. Do you recall how many employees you had in 1964? A. No.

Q. What was the budget of your department in 1964? A. I couldn't remember, I don't remember now. I don't keep it from year to year.

Q. I see, would you say you treated Baconsfield Park about the same as all other parks? A. Yes, included in my appropriation, they didn't get any extra appropriation for Baconsfield at all.

Q. Just considered the same as any other park? Is that correct? [307] A. That's right.

Q. Will you describe for us very briefly what you meant when you said Baconsfield Park was a wilderness when you first went out there? A. Well, there wasn't nothing there but just undergrowth everywhere, one road through there and that's all, one paved road.

Q. And no facilities out there; is that correct? A. No.

Q. And how long did it take you to turn it into a usable park? A. Oh, about 6 or 8 months, probably a year.

Q. I see, and you used employees fairly regularly during all of that year? A. Yes.

Q. Every day? A. Well, we had the PWA labor, trying to get me to give them something to do, you know, and I worked them over there.

Q. You say you used the PWA employees for maybe a year? A. I expect I did, yes, that is what I did my work with.

Mr. Alexander: That's all.

[308] MR. FRANK WILLINGHAM, Witness called by the Interveners being first duly sworn, testified on

Examination by Mr. Alexander:

Q. Will you state your full name, please? A. Frank Willingham.

Q. Where do you live, Mr. Willingham? A. 1139 Oakcliff Road.

Q. Is that in Macon? A. Macon, Georgia.

Q. What is your occupation or profession, sir? A. I am in the textile business.

Q. What do you do in the textile business? A. Well, I run a cotton mill, try to.

Q. And what is the name of the company, sir? A. Willingham Cotton Mill.

Q. Are you connected in any way with Baconsfield Park? A. Yes, I am.

Q. How are you connected? A. I am chairman of the Board of Managers.

Q. I see, and how long have you been chairman of the Board of Managers? A. Since 1964, I believe.

[309] Q. Were you a member of the Board prior to the time that you became chairman? A. Yes, been on the board in 1954 I believe.

Q. Has your service on the Board of Managers been continuous? A. Yes.

Q. Who appointed you to the Board of Managers? A. Well, I suppose the members themselves, I was just asked to serve on the board, and I don't know whether I was appointed or not. I guess the Board so far as I know just asked me to serve and I agreed.

Q. I see, did the person who was then chairman ask you to serve? A. Yes.

Q. Who was the chairman at that time? A. Mr. Newton.

Q. Do you recall the last year in which Mr. Newton served on the Board of Managers? A. No, I would be guessing.

Q. He is not on the Board at the present time? A. It would be '64, I guess, or '63, because, see, I became chairman in '64, and Mr. Newton I think retired shortly after that, so I would say about '64.

Q. I see, what is the present valuation of Baconsfield Park? [310] A. I have no idea.

Q. Has an appraisal ever been made of the park? A. Not that I know of.

Q. Can you give us an estimate of the size of Baconsfield Park? A. I would say about 30 or 40 acres, about the size of the part of the park that we are talking about, not the commercial area.

Q. I see, and what is the approximate size of the commercial part of the park? A. I would say it must be about 8 or 10 acres in there.

Q. Will you say that part of Baconsfield Park might be described as undeveloped? A. Would I say that what, that part of it is undeveloped?

Q. Yes, let me rephrase the question, would you say that a substantial part of Baconsfield Park, you have nothing except trees and bushes? A. I would say a good deal of it is in that state now. There are certain parts between the Highway and the river that certainly are not developed in any way, but I would say most of it is just trees and shrubbery.

Q. Which highway are you referring to now? A. I am talking to 1-16.

[311] Q. And the river is the Ocmulgee River? A. That's correct.

Q. And when you say there were 30 or 40 acres, you did not include this so-called undeveloped land? A. Yes, I would say all of it that we have any control over.

Q. I see. Now, does the Board of Managers have the general control and supervision of Baconsfield Park? A. Yes, we do.

Q. And has it had such control during the entire time that you have served? A. Yes, it has.

Q. Has the Board used at any time any company or organization as agent, servant or employee? A. Now, I don't quite understand you. We have used people in the upkeep of the park since about 1964.

Q. In addition to that have you at any time used the services of an organization or a group or a company as agent for the Board of Managers? A. Not that I know of.

Q. You haven't used any groups for the purpose of managing this property? A. Oh, no.

Q. Or carrying out any business transactions? A. No.

[312] Q. Is that correct? A. No.

Q. Can you state how many buildings are on Baconsfield Park at the present time? A. When you speak of buildings, are you talking about sizeable buildings or small things? We have one large building which we have already discussed, the Woman's Club, but outside of that there are some very small houses there, they are sheds really.

Q. Which year was the Woman's Club built? A. That I don't know.

Q. It was in existence at the time you became a member of the board; is that correct? A. That's right.

Q. Now, do you have in your possession, as chairman, do you have in your possession the records of the minutes of the board? A. Yes, we have that.

Q. Now, do the minutes reflect the year in which this clubhouse was constructed? A. No, I don't think, we have gone through those minutes back as far as they were kept. Part of them were lost, I understand, and we don't have any record with reference to the Woman's Club in the minutes as we now have [313] them.

Q. Who occupies the Woman's clubhouse at the present time? A. No one occupies it.

Q. Is it under the control or use of any particular group? A. It is under the Women's Club.

Q. Is that the official name of the club, the Women's Club? A. Yes, Woman's Club is all I know.

Q. Is the Woman's Club a corporation? A. And that I don't know.

Q. It is a local club here in the City of Macon? A. Well, I think there are several clubs really, but it all goes under the name of Woman's Club. That's the way I understand it.

Q. As chairman of the Board of Managers, what authority did you exercise in allowing the various groups to use the Woman's club house? A. We didn't have any authority as far as I could tell whatsoever. They controlled it themselves.

Q. Who is they, sir? A. The Women's Club, they are the ones that control that, and as far as I know, we didn't have any control at all over the Woman's Club.

[314] Q. How did the Woman's Club come to have use of the club house? A. That was before my time, I really don't know.

Q. Have you from time to time dealt with the various members of the Woman's Club in your capacity as chairman of the Board of Managers? A. Not too much, a time or two they would consult with us with reference to some painting, and we would help them occasionally with the painting, but outside of that, as far as I know, that was it.

Q. Who would consult with you? A. Some of the—well, I am talking about actually, I was not chairman at the time that they consulted us with reference to the painting, Mr. Newton was chairman at that time, and they consulted with him about painting it and so I don't really know the person who talked with him.

Q. Since you have been chairman who have you dealt with there at the Woman's club house? A. I haven't dealt with anyone at the Woman's Club.

Q. Can you tell us the name of the person who is in authority there at the Woman's Club? A. I sure couldn't.

Q. What did the Board of Managers authorize relative to painting the club house? A. Well, as I remember it, we painted it a time or two, [315] it is in our minutes there, I don't know what the amounts were, but it must have been about, oh, 2 or \$300, something like that.

Q. Did the Board of Managers authorize the appropriation of funds; is that right? A. That's right.

Q. Was there ever any discussion at the board meetings relative to the Woman's Club? A. None that—there was some discussion with reference to it but not too much. Didn't any of us seem to understand how it came to be or just what the situation was really.

Q. Is there any kind of written or oral agreement? A. Not that I know of, it wasn't during the time that I was on the Board.

Q. Now, did the Board of Managers appropriate funds for the maintenance of Baconsfield Park, sir? A. Yes.

Q. Do you have this afternoon the budget books and record books that reflect the expenditures of the Board of Managers of the park? A. Yes, we have our records there.

Q. I wonder if we could have 2 or 3 minutes to look at those? (Off the Record.)

Mr. Willingham, did the Board of Managers authorize [316] the construction of the tennis courts, baseball diamond, basketball courts on Baconsfield Park? A. Did they authorize it?

Q. Yes. A. I suppose they did, the tennis courts were there when I went on the board, so really I couldn't say definitely that those tennis courts were authorized by the

board or not, but I am sure they are because the board had authority over the whole park.

Q. Were any of those built during your service on the board? A. The only thing that was built while I was on the board is the Little League Ball Park which they built themselves.

Mr. Jones: Who is they?

The Witness: The Little League, I think that particular one is Ocmulgee Little League, put up the money and built that themselves. Of course, we authorize that they do it and also we helped the Little League for several years there by contributing money to them. I think we did that up until about 1964 when we discontinued that. Other things that were put there were the basketball courts were added on, I think while I was on the Board and this was not, this was done through our authorization but it was done by the Alexander Fund. I don't know their actual name [317] of the organization, but they put up the funds for that to put that basketball court there.

Q. Is that a private fund? A. That's a private fund, I am pretty sure it was.

Q. What did you terminate in 1964, did you terminate the Little League? A. No, the Little League still operates there but we quit donating to the Little League about 1964. It might have been a year—well, that's just about the time.

Q. Why did you terminate making the contribution? A. Well, we were having to keep the park up and our funds were very limited and so we just had to stop it.

Q. You did not have to keep the park up prior to 1964? A. Well, we had to keep it up to a certain extent. In fact, we were in charge of it, sure, but as far as—and we put

out a lot of our funds on keeping it up the whole time, but we had to spend more money after '64 to keep it up because it just took more then.

Q. It took more after '64 than it did before 1964? A. That's right.

Q. And what do you attribute the increase of cost to? A. Well, we hired a private organization to come in there, the Cumbie Brothers and keep the park up, and that was the main reason I would say that it took quite a bit to [318] keep it up.

Q. Will you spell that sir, Cumbie Brothers. A. Cumbie, C-u-m-b-i-e (spelling).

Q. What kind of company was that? A. They are a construction company and they also did some tree work and cut grass and things like that.

Q. I see, and are they now in your employ? A. No, they are not in our employ now.

Q. Well, how many years did they work for the Board? A. It must have been a year, maybe a little over, maybe it was two years.

Q. And those were the years, what, 1964 and '65? A. I would be guessing, but I couldn't say definitely which two years, I would say, it is in the records there when we started paying them.

Q. Would it be accurate to say that this company served as general maintenance supervisor for the park, they did general maintenance work for the park? A. No, I wouldn't say that for this reason, we have tried to keep it up by hiring just one person over there to cut and we couldn't afford the services of Cumbie Brothers and we discontinued that after a little over a year and as I say, it might have been two years and we decided that we would just get one person and try to keep it up that way.

[319] Q. Let me ask this: How would you describe the

general services which Cumbie Brothers performed? A. Simply cutting the grass and picking up the trash.

Q. I see. Do you have, sir, with you the amount of—do you have records which would reflect the amount of money that the Board spent in 1966 for maintenance of the park?

A. They would be the records, it would be in the records which you have there, the financial records, yes.

Q. I wonder if you could look at the records and show us that figure? A. I don't know whether I could actually give you a total.

Mr. Grant: Didn't we furnish that in answer to one of these interrogatories?

The Witness: I don't think there is a breakdown on that thing. Do you have the records?

(Off the record.)

Mr. Grant: In answer to interrogatory No. 9 originally it was set out for 1960 through 1966 the expenditures broken down to flowers and fertilizer, insurance, agency commission and so forth.

By Mr. Alexander:

Q. Let me ask this: Did the Cumbie Brothers perform the services which theretofore had been performed by Mr. James? [320] A. I would say yes, yes, that's correct.

Q. All right. A. Up to a certain extent. I don't think that—actually, I would think it would cost Cumbie Brothers more to perform these jobs than it would Mr. James.

Q. How many employees do you have now working? A. One.

Q. At the park? A. One.

Q. What is the name of that person? A. I can't think of his name. That is why I was looking puzzled. We have got it in the records here in the minutes.

Q. Would that be Rochelle Johnson? A. That's right, Rossell Johnson.

Q. Rossell Johnson? A. That's right.

Q. How long has he been working for the Board? A. I would say for the last three years probably.

Q. He is a full time employee; is that correct? A. No, he is not in full time, I mean he works at the park, I would say, maybe three days a week and I will qualify that, sometimes he might work more than that a week, but then on occasions he will work a couple of days or three days a week on that.

[321] Q. What type of duties does he perform? A. Cuts grass, I was trying to think, he has trimmed the roses some and put some straw around in there and maybe trimmed some of the shrubbery, that's all that I know that he has done, of the duties that he has performed.

Q. I see, what is his salary, sir? A. It is in the record there?

Mrs. Kearnes: Presently it is \$1.45 an hour.

By Mr. Alexander:

Q. You don't know the exact amount? A. No, I don't, the arrangement for that was made by one of the other Board members, and I just can't remember right off hand exactly what it was.

Q. Do you have general supervision over the employees of the Board? A. Well, I wouldn't say that I had direct supervision over them, one of the other members of the Board would actually be the one that supervises it.

Q. Can you give us the name of that member? A. Mrs. Frances Hall.

Q. Where does she live, sir? A. I don't know the name of her street.

Mr. Sparks: Peyton Place.

The Witness: Peyton Place.

Q. Is that in the City of Macon? A. Yes, that's right.

[322] Q. Mr. Willingham, are you familiar with the term Baconsfield Park Commission? A. Yes.

Q. Would you explain to us what that term means? A. Well, it is a Board that was formed for the purpose of running the park. It has direct supervision over the park in every way, and as far as I know that's all they had to do was to supervise the park and ran it in every way. They controlled the funds. Are you talking about the committee that I am chairman of?

Mr. Jones: He asked you if you were familiar with the term "Baconsfield Park Commission." I had never heard it myself.

The Witness: No, I thought he was talking about the committee that I served on.

Mr. Jones: No.

The Witness: I am not familiar with any commission.

Q. As I understand it, you are chairman of the Board of Managers? A. That's right.

Q. I asked you whether or not you were familiar with the term Baconsfield Park Commission? A. No.

Q. You are not familiar with that? [323] A. No, I am not familiar with that.

Q. Are you familiar with the action of the State Highway Department in obtaining certain land for the construction of a highway through Baconsfield Park? A. To some extent, yes, actually most of that was handled by Mr. Newton.

Q. I see, and you were serving on the Board at the time?
A. That's right.

Q. Will you state whether or not the Highway Department obtained that land by condemnation? A. Well, no, I think it was through agreement. We had an appraiser to come in, Mr. Jack Hall, and I understand that it was worked out between this appraiser and the Highway Department and Mr. Newton.

Q. How much did the Board of Managers receive from the Highway Department for that land? A. It is in the record there, I don't know the exact amount. It must be about \$129,000.

Q. Does the Board of Managers have stocks and bonds at the present time? A. They have this fund that you just spoke of, the highway fund invested in bonds and outside of that, that's all that I know of.

Q. Would you say that fund is between one and \$200,000?
[324] A. Yes, \$129,000 is what we received or just about that from the Highway Department.

Q. In addition to that, do you have other cash in the bank in some other depository? A. We have only the regular funds that we receive from commercial property during the year that we use to operate and maintain the park and that's in the records also which we are furnishing you.

Q. Would it be accurate to say that as of today the Board of Managers has approximately \$10,000 in cash for day to day operation of the park? A. I haven't had a report on that too recently about the exact amount that we have in the bank. It is in the record there and you can look at it and see what it is, but I don't know the actual figure that we have in the bank today because there are certain rentals that come in from time to time and of course that would change it.

Q. Would the figure of \$10,000 be approximately correct?

Mr. Jones: Counsel, may I ask a question.

Mr. Alexander: Yes.

Mr. Jones: If you are trying to test his memory, of course, that is one thing; but if you are seeking information, wouldn't your records be the best evidence of it?

[325] Mr. Alexander: Well, I don't think we have any records which would reflect that.

Mr. Jones: All of these records here reflect it.

Mr. Alexander: What I was about to say, sir, I don't think we have the records which—

Mr. Jones: Excuse me, I thought I might suggest to you, that if you had those figures in black and white that that might serve your purpose better.

Mr. Alexander: What I am not certain of is that we have here any records which give us an approximation as of today, I believe the answer to the interrogatories that we submitted were as of January 1, and I am now asking what they have as of April as distinguished from January.

The Witness: We can certainly furnish that to you as to what it is. What it actually is, I don't know. I will just be truthful.

Q. Let me just rephrase the question. The interrogatories, the answers to the interrogatories stated that as of January 1, you had \$9,205. Has there been any substantial depletion of that to the best of your knowledge? A. There would be some depletion—

Mr. Anderson: Could we go off the record and [326] let us give him the figure.

Mr. Jones: If he is willing for you to.

Mr. Alexander: Yes.

Mr. Anderson: The figure on April 17, the cutoff date of this statement shows \$9,443.67 cash on hand.

(Off the record.)

By Mr. Alexander:

Q. I wasn't trying to pin you down to the exact penny, but I just wanted to know if \$9,000 was approximately the amount? A. Approximately, yes.

Q. What is the monthly income that the Board of Managers receive from the lease of the commercial property which is directly across from Baconsfield Park? A. The monthly income?

Q. Yes. A. We get somewhere—I can give you the yearly better than I can give you the monthly.

Q. That would be satisfactory. A. We get somewhere around 5 or \$6,000 a year from that property over there.

Q. Can you give us the name of the lessee? A. The people that we receive it from?

Q. Yes, sir. [327] A. Actually we have it in the leases here, and I couldn't name exactly the ones that lease the property. At one time Mr. Nash controlled most of that property over there and since that time he died and some of it was left in his wife's name and outside of that I wouldn't be able to tell you just who they were. It is in the record there and you have the leases so you would know from that just exactly who they were.

Q. Would it be accurate to say there are 6 or 7 different lessees; is that correct? A. No, I wouldn't think so, I would think there would be 1 or 2.

Q. Would you tell us the exact number of lessees involved? A. We have four leases.

Q. And the Board of Managers receives the income of approximately \$5,000 per year? A. Yes.

Q. From those four lessees; is that correct? A. That's right.

Q. Do you receive any income from any of these sub-leases? A. No, no.

Q. Do you receive a yearly income from the City of Macon for the lease of any property? [328] A. Wait a minute, yes, we do, the Happy Hour Club, which we receive, I think it was \$300 a year, and that's all that I know of that we receive anything from the City.

Q. You may have answered this once before, I don't recall, do you receive any money from the Woman's Club? A. No, no money.

Q. Who on the Board of Managers has the day to day charge of supervision of the Woman's Club? A. No one.

Q. Does the Board of Managers consider itself as having responsibility for the supervision of the Woman's Club on Baconsfield Property? A. No.

Q. Has the Woman's Club been conveyed by the Board of Managers to any other group or any person? A. Not that I know of.

Q. So far as you know it is still owned by the trustees or the Board of Managers of Baconsfield? A. I don't know who owns the club, I just—I was not on there when it was built and I do not know any of the terms of the agreement of when it was built, so I don't know who owns it, I just don't know.

Q. Do you think Mr. Newton might know? A. I don't believe Mr. Newton is in any condition to know right now for health reasons.

[329] Mr. Jones: Mr. Newton is wholly incapacitated so far as providing his testimony is concerned. He can't speak.

By Mr. Alexander:

Q. Let me ask this: Who pays for the electricity that is used in the Woman's Clubhouse? A. The Woman's Club.

Q. Who pays— A. I will say this, I don't know who pays it, we do not pay for it, I know that.

Q. Who pays for the water that is used in the Woman's Clubhouse? A. There again I will say the same thing, we do not.

Q. Has the Woman's Club obtained permission from the Board of Managers to do repair work on the clubhouse? A. No.

Q. Would it be accurate to say then that the Board of Managers has supervision and control of Baconsfield Park and yet you have a structure on the park called the Woman's Clubhouse and you as chairman of the Commission have no knowledge as to the name of the person in charge of the clubhouse, who operates the clubhouse, when it was built, who maintains it or any other information relative to it; is that right? A. That's correct.

Q. And also that there is nothing in your records [330] which in any way reflects that? A. That's correct.

Q. Let me ask you this: Would you consider the occupants of the clubhouse as squatters? A. I don't know whether I would consider them as squatters or not. I think they have the right to be there or they wouldn't be there, but I still don't know whether they legally have the right to be there because I have never seen any agreement with reference to the Woman's Club.

Q. Have you at any time, I believe you answered this question once before, but when did you first become a member of the Board of Managers? A. 1954.

Q. And you have served continuously since then? A. That's right.

Have you at any time from 1954 until the present time in 1967 ever seen any member of the Negro race in the Woman's Clubhouse? A. Yes, I have.

Q. In what capacity were they in the clubhouse? A. I would say as cook or maid or something like that.

Q. You have never at any time seen any member of the Negro Race there as a guest or as a member of the club, have you? [331] A. No, I haven't, but I do not know that it hasn't taken place. Of course, I am not at all of the meetings that they have.

Q. Have you from time to time made visits to the clubhouse at the time they had meetings going on? A. No.

Q. Where does your board of managers hold its meetings? A. We hold our meetings at the First National Bank Building in the Director's Room.

Q. Have you met there during the time, during the entire time that you have been on the Board? A. Have I met what?

Q. Have you held your meetings there at the Bank during the entire time that you have been on the Board of Managers? A. Yes, yes.

Q. Have you at any time ever held your meetings there at the Woman's Clubhouse? A. Not since I have been on the board.

Q. I see, has the school system ever requested permission from the Board of Managers to use the playground on Baconsfield Park? A. That I don't know, so far as I know while I was on the Board, I don't know that they have asked permission [332] to use it. If it happened, it happened prior to the time that I was on the Board.

Q. As of today; that is, during the year, 1967, the school system is continuing to use the playground on Baconsfield Park? A. Yes.

Q. Would you say the general neighborhood in which the park is located is a white neighborhood? A. Yes.

Q. Would you say that the Alexander School which is located in the vicinity is either totally white or predominantly white school? A. Predominantly, yes.

Q. Does the school, the Alexander School in the vicinity of the park have any other playground or is the one on Baconsfield the only playground? A. That's the only one, yes, that's the only one I know of.

Q. Mr. Willingham, would it be accurate to say that beginning in 1964 the expenditures by the Board of Managers for the operation and maintenance of Baconsfield Park increased substantially over previous years? A. Yes, I would say so.

Q. And would you attribute that to the fact that the City of Macon withdrew as trustee? [333] A. Would I—say that again now.

Q. Would you attribute the substantial increase in expenditures to the fact that in 1964 the City of Macon withdrew as trustee? A. Yes, I would say it was.

Mr. Alexander: I think that's all, sir.

Examination by Mr. Jones:

Q. The last subject that he referred to, it has been testified both by Mr. James and the Mayor that to some extent the facilities of the park department of the City were made available to the Board of Managers in connection with the operation and that terminated in 1964? A. Yes, sir.

Q. After that time, did you have any benefit of any sort of character from any such activities by the City? A. No sir.

Q. Whatever costs may have involved to the City for the services which were rendered through its park department, did the Board of Managers always have addi-

tional expense in connection with the operation of the park? A. State that again, I didn't quite get it.

Q. I said irrespective of the value or amount of the participation by the park department of the City in [334] connection with cutting grass and whatever they did there, did the Board of Managers from its own funds also have substantial expenses in connection with the operation? A. Yes sir, it did.

Q. Since 1964—well, one more question, I think I had started to frame this question and didn't complete it, whatever it may have cost the City or the taxpayer to give you the assistance which you did receive, when it became necessary for you to provide that from private sources, would that have been more costly to you than it would to the City? A. Yes sir, that's right.

Q. Mr. Willingham, reference has been made to an appraisal, reference was made to how the State Highway Department acquired the right of way to 1-16 and you stated that you believed that it was by negotiation by Mr. Newton. Do you know as a matter of fact that there was a condemnation suit filed by the State Highway Department? A. Yes sir, I believe it was.

Q. Had there been any prior negotiation with reference to that by Mr. Newton with the Highway Department as to value? A. Yes sir, they had discussed it.

Q. You stated that an appraiser was obtained, was that obtained by the Board of Managers or by the City? [335] A. Actually I think the Board of Managers hired Mr. Hall to make that appraisal of that property. Now, whether the City did or not, I don't know or the highway department.

Q. Would your records disclose the payments for that cost? A. Yes.

Q. You have no information as to what the City may have done or said so far as the Board is concerned? A. No sir.

Q. The cost to them would be reflected in the records of the Board? A. Yes sir, it would.

Q. If I understand the situation with reference to the Woman's Club, the arrangement for its use and the arrangements for its construction all preceded your membership on the Board? A. Yes sir.

Q. And you do not know the details of those arrangements? A. No sir.

Q. Is it or not true, however, that since you have been on the Board the entire management and control of the clubhouse used by the Woman's Club has been under the Woman's Club and not under the Board of Managers? [336] A. Yes sir, that's right.

Q. With reference to the lease rental income, is that a net figure; that is, do the lessors pay for taxes and repairs and insurance? A. Yes sir.

Q. And whatever other obligations would normally reduce the gross rental to a net rental? A. Yes sir, that's right.

Q. So that the amount you receive is net of all of those matters? A. Yes sir.

Mr. Sparks: Excuse me, did you mean to say the lessees paid that?

Mr. Jones: Lessors, no, the lessees paid it. Didn't I say that?

Mr. Sparks: No, you said lessors, and I thought you meant to say lessees.

By Mr. Jones:

Q. I am sorry, I am talking about tenants? A. Yes, sir.

Q. The tenants are the ones who pay all of those? A. Yes sir.

Q. Cost and expenses? A. Yes sir.

Mr. Jones: I believe that's all I have.

[337] *Examination by Mr. Grant:*

Q. As a matter of fact, then tenants are responsible for the construction of improvements on this rented property aren't they? A. Yes sir.

Q. In other words, the Board just leased the vacant land to Charlie Nash? A. As a land lease.

Q. And he through sub-tenants have arranged for the construction of the drugstore and other buildings on the property which was vacant at the time the Board leased it? A. Yes sir, I don't know whether it is proper now or not, but some of the testimony I heard from the Mayor with reference to the dirt or fill that was hauled into the park was paid for by the Board of Managers, we paid some \$3500, I think, for that dirt that was hauled in and it is in the records and you will see it when you read it.

Q. Was that when Mayor Merritt was talking about 100 or 200 loads? A. Yes sir.

Q. In the sink between the clubhouse and North Avenue? A. That's right.

Q. And the records of the Board show that the Board [338] paid the City of Macon \$3500 for hauling that dirt in there? A. Yes sir.

Q. Do the records also show payment by the Board for curbing and guttering? A. Yes sir, that's right.

Mr. Jones: You might read those records into the record with reference to that \$3500.

The Witness: With reference to the dirt that we paid the City for, the Board of Managers paid the City \$3500 for the fill dirt which he testified to this morning between April 1, '56 and March 31, '57. Of course, it was hauled in there at different times, but we did pay that amount to them for that fill dirt that was hauled in there.

Re-examination by Mr. Alexander:

Q. You can't say, can you, Mr. Willingham, that the City never spent any money at all for the operation and maintenance of Baconsfield Park? A. No sir, no sir.

Q. Also you can't state from your personal knowledge that the Board of Managers paid the fair market value for the dirt, can you? A. It was a lot of money, I don't know whether it was [339] fair value or not. I would think so for fill dirt.

Q. But for 100 or so dump truck loads of dirt, you have no personal knowledge as to what such would cost?

Mr. Jones: In 1956?

By Mr. Alexander:

Q. At the time it was placed in the park? A. No sir.

Q. The only thing you know is what the Board of Managers paid out? A. That's right.

Q. Can you state for us a few of the companies or businesses that are on the so-called commercial property? A. Oh, there is ChiChester's Pharmacy, better known as Baconsfield Pharmacy and then there is a Dairy Queen, Pure Oil Company used to be there, and they are no longer there. Seven-Eleven which is a sort of a grocery store, I reckon you would say and then I think there is a variety store over there and a shoe store, and I think

there is a Shell filling station over there, and I think there is one that used to be a laundry, pick-up place there. That is all I know about. Yes, there is a doctor's office over there too, Dr. Birdsong.

Q. Will you state the bank in which the Board of Managers keeps its deposits? A. First National Bank and Trust Company.

[340] Q. And has the Board of Managers at all times used that bank as depository for its funds? A. The whole time I was on the Board, yes.

Q. I think you indicated you wanted to describe what the relationship of the bank was.

Mr. Jones: I made the statement that Mr. Willingham can correct that he has stated, Mr. Willingham had testified that there was no agency contract with any organization or company. He was referring to operation and management of—the Board of Managers does have a fiscal agency agreement with the First National Bank under which the First National keeps its financial records and receives the funds that come to them and disburse those funds, and that is done by the First National under an agency agreement with the Board of Managers.

By Mr. Alexander:

Q. Is what counsel stated correct? A. That's right.

Q. Has the Board at any time made deposits of funds with the City of Macon? A. No sir.

Q. What was the arrangement regarding the handling of fiscal matters prior to 1964? A. It was the same as it is now.

Q. Did the First National Bank serve as depository [341] prior to 1964? A. As far as I know they served.

Q. Who handled the business affairs of the Board prior to 1964? A. The Board handled it.

Q. Any particular member of the board? A. Well, Mr. Newton was chairman, and he was trust officer of the First National Bank.

Mr. Jones: May I clarify that a little further.

Mr. Alexander: Yes.

Mr. Jones: Actually the bank has always been the depository bank of the funds and they have maintained their checking account. However, the agency arrangement did not originate until October, 1964. Prior to that time Mr. Newton was there and Mrs. Kearnes was Mr. Newton's secretary and she kept, they kept some of the bank's records and incidentally some of the others, but it was purely a checking account so far as the bank was concerned prior to that time and a function of Mr. Newton as a member of the Board or chairman of the Board to look after things and Mrs. Kearnes did a good deal of that for him, for Mr. Newton. I think that's the situation.

The Witness: That's correct, yes.

Mr. Alexander: No further questions.

[371]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[TITLE OMITTED]

INTERVENORS' SUPPLEMENTAL RESPONSE TO
MOTION FOR SUMMARY JUDGMENT FILED BY
SUCCESSOR TRUSTEES UNDER WILL OF
A. O. BACON—Filed June 27, 1967

Comes now, REV. E. S. EVANS, LOUIS H. WYNN, REV. J. L. KEY, REV. BOOKER W. CHAMBERS, WILLIAM RANDALL, and REV. VAN J. MALONE, Intervenor, who file this Supplemental Response to the Motion for Summary Judgment filed by the successor trustees under the will of A. O. Bacon, and show the Court the following:

—1—

There are many additional material facts which are in dispute or which have not been fully developed in this case. The Intervenor show further that before the instant case is disposed of, a full hearing should be had to determine the facts and to fully develop certain important aspects of this case.

—2—

There are several constitutional questions involved in this case and intervenors are entitled to a full hearing on the merits, including an opportunity to introduce evidence and produce witnesses, before said constitutional questions are resolved.

—3—

The entry of a judgment to the effect that the trust properties should revert to the heirs of Senator Bacon would violate the intervenors' rights under the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution, in that:

(a) A Judicial decree of reversion would not implement the [372] intent of Senator Bacon's will, which expressed the legally incompatible intentions that (1) Negroes be excluded from Baconsfield Park, and (2) that Baconsfield Park be kept as a municipal park forever. A judicial choice between these incompatible terms must be made in conformity with the said Fourteenth Amendment. The affirmative purpose of the trust, to have a park for white people, will not fail if the park is opened for all, and for the court to rule that the mere admission of Negroes to the park is such a detriment to white persons' use of the park as to frustrate the trust and cause it to fail, would be a violation of the said Fourteenth Amendment.

(b) Substantial amounts of government funds, labor, services, goods, and materials have been contributed to the establishment, development, and maintenance of Baconsfield Park over a long period of time. The City of Macon appropriated funds and also developed the park by a landscaping project funded in part by the City of Macon and in part by the United States Government through its agency, the Works Progress Administration (W.P.A.).

Intervenors show further that the City of Macon appropriated substantial funds of at least \$100,000.00 to erect a swimming pool, playground and recreational facilities, established by the City of Macon and the Bibb County School System. The said School System continues to use Baconsfield Park as a playground for one of its schools, namely Alexander School No. 3. The said park was operated from the time of its development until the City resigned as trustee, as an integral part of the Macon parks system and maintained by City of Macon employees out of general appropriations of the city parks department.

(c) By virtue of contributions to Baconsfield Park made by the Government of the United States, the entry of a judgment to the effect that the trust properties should revert to the heirs of Senator Bacon, would violate the

intervenor's rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.
[373]

—4—

That attached hereto, and incorporated herein by reference, are the following exhibits:

- (a) Exhibits "A" and "B"—two volumes of minutes of the Board of Managers of Baconsfield.
- (b) Exhibit "C"—Statement from the First National Bank and Trust Company of Macon, Georgia, Trust Department, agent for the Board of Managers, for the period of 10-14-64 to 4-17-67.
- (c) Exhibit "D"—Statement of assets of said Board held by said Trust Department as agent of the Board.
- (d) Exhibit "E"—Certified copy of records of the Works Progress Administration (W.P.A.), Project No. 244, thru 262 and 2364 relating to landscaping of Baconsfield Park.
- (e) Exhibit "F"—Certified copy of Deed from Bibb County Deed Book 248, Folio 11.
- (f) Exhibit "G"—Certified copy of Deed from Bibb County Deed Book 248, Folio 16.
- (g) Exhibit "H"—Certified copy of Deed from Bibb County Deed Book 496, Folios 157-159.

—5—

That in addition to the foregoing, the interrogatories and deposition filed in this case are incorporated herein by reference.

WHEREFORE, intervenors pray that this court:

- (a) deny movants the requested motion for a summary judgment and set this case down for trial on the merits;

(b) vacate its previous judgment permitting the City Council of Macon, Georgia to resign as trustees of Baconsfield;

(c) vacate its previous judgment appointing private trustees to administer the Bacon trust;

(d) make so much of the Georgia Supreme Court's judgment on remand as is consonant with and not inconsistent [374] with the judgment of the United States Supreme Court in the case of *Evans, et al. vs. Newton, et al.*, 86, S. Ct. 486, 15 L. ed. 2d 373, the judgment of this Court; and

(e) declare the City Council of Macon, Georgia and its successors in interest the trustee of the Baconsfield Park forever to hold, maintain and operate as a public park on a nondiscriminatory basis and otherwise in accordance with the wishes of Senator Bacon as expressed in his Last Will and Testament; or

(f) alternately, declare the City Council of Macon, Georgia and its successors in interest, the bona fide holders of Baconsfield Park in fee simple;

(g) grant them cost and attorneys fees in this action;

(h) grant such other and further relief as to this Court may seem just and proper.

This 26 day of June, 1967.

/s/ WILLIAM H. ALEXANDER

WILLIAM H. ALEXANDER

859½ Hunter Street, N. W.
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Attorneys for Intervenors

(Certificate of Service Omitted in Printing)

[506]

EXHIBIT "B"

MINUTES
BOARD OF MANAGERS
BACONSFIELDcovering
periodFrom March 30, 1936
Through Oct. 31, 1945.

[507]

March 30, 1936.

The meeting of the Baconsfield Park Commission was held today in the Mayor's office with the following present: Mr. G. Glen Toole, Chairman; Mrs. Hay; Mrs. P. Williams; Mayor Herbert I. Smart; Dr. W. G. Lee.

The election at the previous meeting of Mrs. T. J. Stewart to succeed Mrs. Randolph Jaques who resigned was confirmed. Dr. W. G. Lee was elected Secretary and Treasurer for a year.

Chairman Toole and Treasurer Lee reported that they had granted use of the base-ball park in Baconsfield Park to General Motors Company to stage a "Parade of Progress" show free of charge through their agent, C. A. Lewis, in charge of the Department of Public Relations, and same was approved by the board.

The following resolution regarding Mr. John L. Anderson, former member of this board, was approved:

"WHEREAS, John L. Anderson, a former member of this Board, was duly elected secretary and served as such for several years, and—

"WHEREAS, the said secretary has moved from the City of Macon, and his membership on this Board has been declared vacant, and—

"WHEREAS, the minutes of the meetings held during the tenure of office of Mr. Anderson are in his possession, and although repeated efforts have been made to obtain the said minutes they have not been forthcoming—

"BE IT RESOLVED That the action of the [508] members of this Board up to the present are hereby approved.

"BE IT FURTHER RESOLVED That continued efforts be made to obtain the said minutes and in the meantime the new secretary keep regular minutes of the meeting."

The following is a copy of an item in the will of Senator A. O. Bacon, which furnished the basis for the following resolution :

"Should the Mayor and Council of the City of Macon at any time consent to do so, then I direct that they be authorized to receive the fund constituted of said bonds and all additions thereto and the proceeds thereof, and cover the same into the treasury of the City, in consideration of the perpetual obligation of the city to be evidenced by its bond or otherwise, to provide and pay over annually to the said Board of Managers an amount equal to five per centum interest upon the sum thus covered into the treasury, to be devoted by said Board to the uses hereinbefore specified."

Motion was made by Dr. W. G. Lee that Mayor Herbert I. Smart be requested to take up with the Council of the City of Macon and the proper department of the Federal Government the matter of paving the roadways in Baconsfield Park, with the understanding that Council will furnish

the proceeds from the sale of \$10,000.00 worth of Macon Railway and Light bonds [509] owned by the Park Commission and held by the City of Macon to be used for such paving if it can be supplemented with funds secured from the Federal Government on the customary basis of 55-45.

Chairman Toole and Treasurer Lee reported to the commission that within the last twelve months that they have planted approximately 3,000 dog wood, both white and pink, in the park, about 10,000 rhododendron and mountain laurel, about 600 camellia japonicas, and 5,000 azaleas; that the walks and bridges have been laid out through the woods and placed over the streams; and that the park is rapidly developing into a real place of pleasure and resort for the white residents of Bibb County, as set forth in the will of its donor.

DR. W. G. LEE

Dr. W. G. Lee, Secretary

O.K. W.G.L.

[512]

June 29, 1936

Meeting of the Baconsfield Park Commission was called in the Mayor's office at 10:30 o'clock in the morning of June 29, 1936, with the following members present:

Chairman G. Glen Toole
Mayor Herbert I. Smart
Mrs. P. L. Hay
Dr. W. G. Lee.

The minutes of the meeting of March 30 were read and approved, with a correction of Mrs. Frederick Williams instead of Mrs. Cheatham's name as appeared in the minutes.

The matter of paving the roads in Baconsfield Park was discussed at length, as was also the building of a swimming pool in the Park. After some discussion, motion was made by Dr. W. G. Lee that the members of the Park Commission who were present be made a Committee for the purpose of selecting and agreeing upon a site in the Park for the building of a swimming pool, and that they hold their first meeting this afternoon at 6:30 in the Park. The motion was carried. Mayor Smart, Ch.

The following bills from Crane & Company were authorized for payment, for plumbing done in the home occupied by Mrs. Hedeman:

\$11.65,
\$5.81,
\$1.39,
\$5.45.

The occupancy of the home by Mrs. Hedeman came up for discussion, and the entire commission was of the opinion

that the property should not be used for charitable purposes, and agreed as soon as possible to repossess this property, and requested that no more money be expended on it until it was restored.

[513] The matter of the house occupied by the man in charge of the boats on the river, recently moved without authority to the hillside, came up for discussion, and met with the objection of some members of the Commission. No final decision was reached in this matter, but further consideration will be given it in the immediate future.

There being no further business, the meeting adjourned.

Dr. W. G. LEE

Dr. W. G. Lee, Secretary

[514]

June 30, 1936

A meeting of the Baconsfield Park Commission was held in the Mayor's office on July 30, with the following members present:

Mrs. P. L. Hay,
Mrs. T. J. Stewart,
Chairman G. Glen Toole,
Mayor H. I. Smart,
Dr. W. G. Lee.

The minutes of the meeting held June 29 were read and approved.

Chairman G. Glen Toole reported with reference to a petition sent by him as Chairman of the Baconsfield Park Commission requesting the release of the Macon Railway & Light Company bonds to be converted into cash and used for developments in the Park in terms of the Will of Senator A. O. Bacon, that Council had acted favorably upon same.

Chairman Toole reported that he had had an opportunity of visiting the swimming pool at Athens, Georgia, and found that it was being operated at a profit. He also visited the Candler pool at Atlanta, Ga.

Motion was made by Mayor Smart that Dennis & Dennis be selected as architects provided satisfactory arrangements can be made with them. The motion was carried, and Chairman Toole appointed Mayor Smart and Dr. Lee to contract with them.

Motion was made by Mrs. P. L. Hay that a committee of three be appointed with power to act to carry on all matters pertaining to the building of the Swimming Pool in Baconsfield Park, with especial reference to the matter of arranging finances for the execution of same.

There being no further business, the meeting was [515] adjourned.

W. G. LEE

Dr. W. G. Lee, Secretary

[516] The following committee: Mrs. P. L. Hay, G. Glen Toole, Mayor Herbert I. Smart, and Dr. W. G. Lee, met at Baconsfield Park July 29, 1936, and after some deliberation agreed upon site for the proposed swimming pool.

The following day, Messrs, Toole, Smart and Lee, with architect, Mr. Dennis, visited pools at Griffin and LaGrange, Georgia, saw fine plants and gained considerable knowledge about construction. They came away convinced of the wisdom of pursuing to successful conclusion the erection of a pool here as early as possible.

W. G. LEE

Dr. W. G. Lee, Secretary

approved

7-30-36

[525]

June 28, 1938

A meeting of the Baconsfield Park Commission was held at 11:00 A. M., in the Women's Club on the Park grounds, with the following members present:

Chairman G. Glen Toole,
Mrs. Kenneth Dunwoody,
Herbert I. Smart,
W. G. Lee,

with a Committee from the Women's Club, Mrs. Booth, Chairman, appearing before said Commission.

Chairman Toole reported regarding the stone marker on the premises, in memory of Senator A. O. Bacon, that with the aid of the County stone which had been selected in Jones County could be moved, and for a nominal cost of \$25.00 the wording and lettering could be done. This was authorized, and the Committee was requested to proceed with same.

Regarding the planting of evergreen trees in the swamplands adjacent to Spring Street Bridge, Chairman Lee reported that 48 bay trees, and 156 Virginia live oak had been planted; that 144 bamboo plants had been set out, representing six different varieties, which were donated by the U. S. Government; also that 500 additional dog wood, some of them single white, double flower white, and double flower red, had been planted, making a total number of 2,000 planted in the Park over the last two years. Likewise, Petunias in large numbers had been planted on the borders leading to the approaches of the Bridge.

The Baconsfield Park Commission expressed appreciation to Secretary W. G. Lee for the donation of three large Camellias, planted in the small triangular park adjacent to Nottingham Drive.

[526]

Mr. Toole requested all of the members of the Commission who were present at today's meeting, to aid the Women's Club in every way they could, in the plans for construction of a new Club House on the grounds. The Committee approved the site which had been selected to build the new Club House on. Letters from the Mayor and Council, and from representatives of the heirs of Senator Bacon, were presented by Mrs. Booth, and will be made a part of the permanent records of the meeting.

Secretary W. G. Lee made a motion that the Mayor and Council be requested to give police powers to the park keepers now on the grounds, and that they be instructed to stop trucks and fruit wagons and such traffic from using the roads and streets in the Park proper.

A Committee composed of Mrs. Dunwoody, Messrs. Smart and Lee, was appointed by the Chairman and requested to ask Council's cooperation in getting all of the available second-hand paving material possible, and take such other necessary steps to comply with Federal Aid requirements in getting the streets in Baconsfield Park paved so that it could be used the year round with safety and convenience.

This Committee was likewise requested to ask Council to consider the wisdom of converting our \$10,000.00 of Railway & Light Bonds into money, and using the same to match Federal Aid in the building of a modern, up-to-date swimming pool in Baconsfield Park.

There being no further business, the meeting adjourned.

Dr. W. G. LEE, SECRETARY

Dr. W. G. Lee

approved except last clause concerning using bonds money for pool

[527]

October 12, 1938

A meeting of the Baconsfield Park Commission was held in the Mayor's office on October 12, 1938, with the following present:

Chairman G. Glen Toole,
Mrs. Stewart,
Mrs. Hay,
Mr. Smart,
Dr. Lee.

The minutes of the meeting held June 28, 1938 were approved, with the exception of the last clause authorizing the expenditure of our Railway & Light Bonds for the swimming pool.

Secretary & Treasurer W. G. Lee requested that the purchase of Dogwood, Magnolia, and other shrubbery be authorized, provided it was approved by the Park Commissioner, Mrs. James. The recommendation was unanimously approved.

Motion was made by Chairman Toole that a petition be made to Mayor and Council, for the sale of the Railway & Light Bonds held by the Baconsfield Park Commission, *said funds to be used to match Federal Aid*, and the total amount to be used in paving roadways within the Park, *said roads to be approved by the Baconsfield Park Commissioner*.

There being no further business, the meeting was adjourned.

Dr. W. G. Lee, Secretary
W. G. Lee

Approved
5-26-1939

[528]

May 26, 1939

A meeting of the Baconsfield Park Commission was called to order by Chairman Toole, at the City Hall with the following members present:

Chairman Toole,
Mrs. Williams,
Mrs. Dunwoody,
Mrs. Hay,
Mr. Smart,
Park Commissioner James,
Secretary & Treasurer W. G. Lee.

The minutes of the meeting held October 12, 1938 were read and approved.

The meeting reported after a conference with Mayor Bowden that effort was being made to include the roadways in Baconsfield Park in a paving program being projected by the City. They hope to report progress in the near future on same.

Dr. Lee reported an itemized list of all receipts and Disbursements since 1937, through May 26, 1939. Same was approved and was made a part of the minutes, and the Mayor was requested to have the books of the Treasurer audited at their convenience.

Mr. Smart discussed the wisdom of having cards furnished to the hotels, advising the traveling public of our parks, in order that they might take advantage of same. The matter was referred to Mr. Smart for his attention.

Motion was made by Mr. Toole that the Park Commission be requested to stop allowing dirt hauled out of any of the Park property by anyone for any purpose. This was duly carried.

He also moved and the motion was carried, that Messrs. Lee, Smart and James be authorized to purchase such [529] additional shrubbery as they deemed necessary to complete the planting for the lowlands of the Park above and below the Bridge.

There being no further business, the meeting was adjourned.

Dr. W. G. Lee

Dr. W. G. Lee, Secretary & Treas.

O. K.

by ———

W. G. Lee

[546]

October 27, 1942

A meeting of the Baconsfield Park Commission was called by Chairman Toole and met at the City Hall at 11:00 A. M., with the following members present:

Mrs. Kenneth Dunwody
Mrs. P. L. Hay
Mayor Chas. L. Bowden
Mr. Herbert Smart
Chairman Toole and
W. G. Lee, Secretary and Treasurer

The minutes of the meeting of March 3, 1942, were read, and a new contract signed by the Mayor of Macon and W. G. Lee, Secretary and Treasurer of the Baconsfield Park Commission, transferring title to site of roadway through the East side of the Baconsfield Park property, accompanied by check from Mayor and Council and a map, which is to be made a part of the minutes, was presented, read and approved.

Chairman Toole reported the fact that the lady living in the house with Mrs. Hedeman, who had been bedridden for some time, had expired, and recommended that the property be possessed from the present occupants and the same be improved for renting purposes. The motion was made by Herbert Smart and seconded by Mrs. Hay and was carried. Reference to the minutes of July 10, 1941, to the effect that Chairman Toole was authorized at that meeting to notify Mrs. Hedeman to vacate the property was made and said motion was passed and he was again at this meeting requested to proceed to get possession of the property.

Mr. Smart made a motion that a committee be appointed with power to act in the matter of contracting, if possible,

to rebuild the house at present occupied by Mrs. Hedeman, at a price not to exceed \$700.00. The motion was seconded by Mrs. Hay and was passed. The Mayor proceeded to appoint the following committee:

[547]

Lee, Chairman

Smart

Mrs. Hay

Mr. Cleveland James, Superintendent of the Park, was present at the meeting and after a free discussion by him and Dr. W. G. Lee regarding the need for shrubbery for planting additional areas in the Park and completing other areas in planting, a motion was made by Mrs. Dunwody and seconded by Mr. Smart that Secretary and Treasurer W. G. Lee be authorized to buy such things as were needed for planting purposes.

Mayor Chas. L. Bowden reported that the contract had been let for the paving through the East side of the Baconsfield Park Property and the entrance to the park opposite the entrance to the new paved highway to be made to conform in symmetry and appearance to each other. He also said that the survey revealed that it would be necessary to make it something like four or five feet beyond the present Northwestern boundary of Spring Street at the street for the purpose of improving the appearance and usefulness and safety of said street. The Board unanimously approved doing this and thanked Mayor Bowden for his attention to same.

The meeting then adjourned.

DR. W. G. LEE Sec. & Treas.

Dr. W. G. Lee, Secretary and Treasurer.

Approved by board

B. P. Com.

[548]

December 15, 1944.

The meeting of the Baconsfield Park Commission was called to order at the City Hall on Friday, December 15, 1944, Mr. G. Glenn Toole presiding, and all members present except Mrs. Tom Stewart. Mayor Bowden was present and stayed throughout the meeting.

The minutes of the last meeting held March 3, 1942, were read and approved.

A statement of the financial condition of the Commission was presented by the Treasurer, Dr. W. G. Lee, item by item from the above date through December 15, 1944, and was unanimously approved.

Secretary & Treasurer W. G. Lee reported to the Board the purchase of a concrete pipe costing \$735.00 to be used in closing up the last bad area of soil erosion in the Park. He also reported the purchase of a combination plow, tractor, mowing machine and spraying machine, together with the necessary equipment for complete usage, to the Board and they approved same.

Mayor Bowden presented the offer of Wofford Oil Company to lease the filling station on the corner of Spring Street and Emery Drive from the Park for ten years at \$65.00 per month, which really represented an extension of the lease previously held by the same concern. The lease is really for the land owned as the buildings on it and the improvements were made by the tenant. The board authorized the Secretary & Treasurer to sign said lease, which has been done, and it has been forwarded to Atlanta for signature and when returned, will be made a part of the minutes of this meeting.

A motion was made by Mr. Herbert Smart and seconded by Mrs. Dunwody that the Secretary be requested to address a letter to Mrs. E. E. Hedeman, advising her that she may continue [549] to use the house, in which she lives,

as she has in the past without cost until the first day of January, 1945. If she wishes to continue in it in its present condition without any expenditure on the part of the Baconsfield Park Commission, she may do so upon payment of \$25.00 per month in advance with the privilege of giving it up upon thirty days written notice at any time that she desires. Should she not wish to use the building under these conditions, she is here and now requested to vacate it by January 1, 1945."

Quite a bit of discussion was had, regarding the improved condition of the property, the amount of shrubbery growing upon it and its condition, in a most favorable manner by the members of the Board.

A motion was made by Mrs. Frederick Williams and seconded by Mrs. P. L. Hay that the Secretary, Dr. W. G. Lee, be requested to present the unanimous wish of the members of the Board to Col. A. O. B. Sparks, reciting under what conditions the City of Macon and the Baconsfield Park Commission would like to plan to build a swimming pool of big proportions upon certain parts of the property. If Col. Sparks is favorably impressed and feels disposed to secure the signature of the other heirs, granting their permission, we will immediately seek to carry out the plans. The motion was carried.

The mayor said that as soon as laborers on the stockade were in sufficient quantity to install the pipe and the necessary work which he had previously agreed to do, if we would buy the pipe, that he would carry out and complete this project.

There being no further business, the meeting adjourned.

DR. W. G. LEE

Dr. W. G. Lee, Secretary & Treasurer

[550]

BACONSFIELD PARK COMMISSION

TREASURER'S STATEMENT FROM MARCH 3, 1942
TO DECEMBER 15, 1944

INCOME RECEIPTS

Rents received from Wofford Oil Co.	2,210.00
Rents received from J. J. Bowen Fruit Stand	400.00
Check from City of Macon	1,500.00
	<hr/>
Total receipts	4,110.00

INCOME DISBURSEMENTS

Insurance paid to W. D. Griffith & Son	19.74
Paid to Central Ga. Nurseries	782.00
Paid to Davenport Guerry	50.00
Paid to Heard Brothers	277.68
Paid Railroad express	2.71
Paid to Bibb Concrete Pipe Co.	735.00
Bookkeeping fee to Bank	170.00
	<hr/>
Total Disbursements	2,037.13
	<hr/>
Receipts over disbursements	2,072.87
Cash on hand March 3, 1942	808.14
	<hr/>
Cash on Hand as of December 15, 1944	\$2,881.01

[551]

May 30th, 1945

Meeting of the Baconsfield Park Commission was called to order by Chairman G. Glenn Toole in the Mayor's Office, City Hall, at ten o'clock, with the following members present:

Chairman G. Glenn Toole,
Mrs. Tom Stewart,
Mrs. Williams,
Mrs. Dunwody,
Mr. Herbert Smart,
Sec'ty and Treas. W. G. Lee,
Honorable Charles L. Bowden.

Park-Keeper Cleveland James was present by invitation. Mrs. Stanley Elkan was invited to be present and present a matter in behalf of the Girl Scouts, but did not attend. This matter will be carried over until the next meeting.

Minutes of the meeting of December 15th, 1944, together with an itemized statement from the Treasurer, W. G. Lee, were read and unanimously approved.

Mayor Bowden made a verbal report on the progress of securing Federal appropriation to match a local fund to be furnished by the Mayor and Council of Macon for the purpose of building a swimming pool in Baconsfield Park. Correspondence between the heirs of Senator Bacon, City Attorney J. Ellsworth Hall, Mayor Charles Bowden, and W. G. Lee, Secretary of Baconsfield Park Commission, was read to the Board and ordered made a part of the minutes of this meeting as follows:

"Macon, Georgia
February 10, 1945

"Colonel A. O. B. Sparks
Cfo Jones, Jones & Sparks
Macon, Georgia

[552]

Dear Gus:

At a meeting of the Baconsfield Park Commission held in the office of the Mayor, Charles L. Bowden, a resolution was passed appointing me, as secretary and treasurer of the Baconsfield Park, a committee of one to confer with you seeking your aid in getting the consent of the heirs of United States A. O. Bacon for the construction of a \$200,000 swimming pool and the necessary appurtenances to be erected in Baconsfield Park, subject to such conditions as would meet with the approval of you as representative of the heirs and the Baconsfield Park Commission.

The Mayor expressed a willingness to appropriate \$100,000 from his post war fund, provided he could get the Federal Government to match this fund with a similar amount. He is ready and willing to make the approach to the Federal authorities, but before doing so, wishes to have the consent of the heirs of former Senator Bacon.

The conditions surrounding the consent of the heirs and meeting with the approval of the Baconsfield Park Commission as nearly as I can comprehend them are about as follows:

We would like to develop this property on the slope facing the river beginning at a lone pine and running north or northwest to the first dirt road, leaving the W. G. Lee Boulevard.

It is the intention of the Park Commission to build and develop as handsome a property, even including sun decks, as the funds permit.

The Commission and the Mayor are both in agreement that the undertaking from the point of construction, as well as the control of the operation, will be permanently under control of the Baconsfield Park Commission; and that the net income [553] from its operation will be used

in further developing and maintaining the Baconsfield property.

Adequate parking facilities will be developed and the City will furnish to the Baconsfield Park Commission, police protection sufficient to see that it is handled in an orderly and becoming manner at all times. Since the personnel of the Board is continuously composed of four ladies and three men, we are confident that the control of it will always be of a very high standing.

Since there are no other such facilities within the City and since this project would be only a fraction of a mile from the court house, making it easily and economically accessible to a large population, we feel that the future of the park's ultimate development and usage will be greatly enhanced by this project. I personally think that such an arrangement would make possible a usage of the property eventually greater than even the donor comprehended when he so graciously arranged for a municipal ownership of this property.

I would appreciate it very much if, at your convenience, you would supplement the facts I have enumerated, which occur to you as being necessary, and get the written consent of the heirs for this development and send it to me. The Mayor assures me that as soon as he receives it, he will proceed at once to see if he can get the \$100,000 fund matched by the Government.

Thanking you very much for the time you have given in the previous conferences regarding this project, and assuring you of my complete confidence in what it will do for the usage, enjoyment and permanent development of the property, I remain,

Yours very truly,

Dr. W. G. Lee."

[554]

"Macon, Georgia
February 21, 1945

"Dr. W. G. Lee
First National Bank and Trust Company
Macon, Georgia

Dear Doctor :

I have not sooner replied to your letter of February 10, for the reason that I wanted to discuss with Ellsworth Hall, Jr., the provisions in the Will of the late Senator Bacon, with regard to Baconsfield and particularly with regard to my view that the construction and operation of a swimming pool under the conditions set forth in your letter would not be a violation of the terms of the bequest. I have done that and, as I understand it, Mr. Hall agrees with me that it will be entirely proper for the City to construct such a pool and for the Baconsfield Board of Managers to handle and to control and direct its operation in the manner outlined.

As I stated to you the other day when you mentioned this to me, I can see no reason why the consent of the heirs of the testator should be obtained, nor can I see why it is desirable to obtain this consent. I think that Mr. Hall agrees with me in this, and my understanding is that the Mayor, Hon. Charles L. Bowden, no longer desires to obtain such consent, and I am, therefore, not endeavoring to obtain it as requested.

I suggest that you confer with Mr. Bowden, and if I am wrong in my understanding, that you let me know.

Sincerely,

Gus."

CC: Mr. Ellsworth Hall, Jr."

[555]

"Macon, Georgia
March 2, 1945

"Dr. W. G. Lee, Secretary and Treas.
Baconsfield Park Commission
First National Bank & Trust Company
Macon, Georgia

Dear Dr. Lee:

Permit me to thank you for copy of letter from Mr. Gus Sparks in further reference about the swimming pool located in Baconsfield Park.

At the last meeting of the Park Commission I believe they appointed you as their representative to handle this project with Mr. Sparks and with the City. If I am correct in this will you please write a letter for the Park Commission addressed to the City of Macon asking them to sponsor the construction of a swimming pool in Baconsfield Park as we discussed then our Council Committee can work on the project and see if we cannot bring it to a successful conclusion.

If the Board did not give you such authority, at the next meeting I will appreciate you getting the Board to give you the authority to write such a letter so that we might have such a request from the Board to commence on the project.

With all good wishes, I am,

Sincerely yours,
Chas. L. Bowden."

[556]

"Macon, Georgia
March 6, 1945

"Mayor and Council
City of Macon
Macon, Georgia

Gentlemen:

The Baconsfield Park Commission at a recent meeting held in the City Hall, at which the Honorable Charles L. Bowden, an honorary member of the Board, was present, appointed me as a committee of one to study the opportunity for building a swimming pool for both children and adults in the park. They further requested that I confer with the Honorable Gus Sparks regarding the legality of our doing so.

Mr. Sparks, after a study of Senator Bacon's will and after a conference with city attorney, J. Ellsworth Hall, advised me that since all the net proceeds of said swimming pool would be under the control of the Baconsfield Park Commission and the expenditure of the entire net proceeds would be used in further development of the park property with an annual accounting made to the Mayor and Council of the receipts and disbursements, he sees nothing to prohibit us from proceeding accordingly.

A copy of the letter from Attorney Sparks can be seen in the Mayor's office.

As the appointed representative of the Baconsfield Park Commission, I request your Honor to take the necessary steps to make possible the much needed development for the benefit of the citizens of this City.

Yours very truly,

Dr. W. G. Lee
Secretary and Treasurer

[557]

Baconsfield Park Commission

Mayor Bowden reported that the installation of the sewer pipe would cost approximately \$1600.00 and that if Baconsfield Park would share \$500.00 of the cost, he would let the contract immediately. Mr. Herbert Smart made a motion that the Secretary and Treasurer, W. G. Lee, issue check for \$500.00 and mail to Mayor Charles Bowden to be applied to the contract of Sam Hall & Sons for the installation of this pipe.

Motion was made by Mr. Herbert Smart and seconded by Mrs. Frederick Williams that the location just off of Lee Boulevard be adopted for the erection of the tablet in memory of former United States Senator A. O. Bacon. Secretary and Treasurer W. G. Lee recommended that such a part of \$200.00 be appropriated for expenditure of bearded iris as was needed for planting the area in the rear of the tablet mentioned above. The committee appointed by Chairman Toole was Mrs. Dunwody, Mrs. Williams, and Mrs. Stewart, aided by Park-Keeper James.

Secretary and Treasurer W. G. Lee recommended that an area beginning at Curry Drive and extending as far up Nottingham Drive as needed be set aside for the installation of playground equipment and that same be sufficient to comprehend the needs of children from the early ages on to maturity. Mayor Bowden and Park-Keeper James were requested to accumulate information about the type of playground equipment we should purchase and report to the Board at a subsequent meeting.

Chairman Toole stated that due to impairment of his health, he preferred to not continue as Chairman of the Board or as member of the Board, and tendered his resignation. The entire Board expressed regret at the necessity on his part for this action, but upon his insistence, the

motion was put and carried, accepting same. A committee composed of [558] Mrs. Williams, Mrs. Dunwoody, and Mrs. Stewart was appointed for the purpose of drafting a resolution of appreciation for his long service, and request was made that a copy be sent to Mr. Toole and to the Secretary Treasurer of the Board.

Mr. Smart made a motion, which was seconded by Mrs. Stewart, that a meeting be called within the next two weeks for the purpose of electing a member to fill the vacancy caused by Mr. Toole's resignation and to elect a Chairman of the Board.

There being no further business, the meeting adjourned.

Secretary

[559]

BACONFIELD PARK COMMISSION

TREASURER'S STATEMENT FROM DECEMBER 15, 1944
TO MAY 30, 1945

INCOME RECEIPTS

Rents received from Wofford Oil Company from December 15, 1944 to May 30, 1945—January, Feb; March; April; May rents @ \$65.00	\$ 325.00
Rents received from J. J. Bowen Fruit Stand from December 15, 1944 to May 30, 1945—November; December; January; Feb; March April; May @ \$10.00 per month	70.00
Rents received from Mrs. Hedeman, 105 North Avenue from December 15, 1944 to May 30, 1945—January; Feb; March; April; May @ \$25.00	125.00
Total Receipts	<hr/> 520.00
Cash on hand as of December 15, 1944	2,881.01
	<hr/> \$3,401.01

INCOME DISBURSEMENTS

January 10, 1945	To Clark Memorial for marker	340.50
March 20, 1945	To Atlanta Tractor & Equipment Company	469.18
March 20, 1945	To Georgia Highway Express Co.	5.97
March 22, 1945	To W. D. Griffith & Son Insurance	6.19
	Bookkeeping fee to Bank @ \$5.00 per month, January thru May	25.00
Total Disbursements		<hr/> 846.84
Cash on hand as of May 30, 1945		<hr/> \$2,554.17

5-30-45
Approved

[560]

Macon, Georgia
November 1, 1945

A meeting of the Baconsfield Park Commission was held in the Mayor's offices, with all members present except Mrs. Tom Stewart, who was unable to attend because of illness in her family. At the request of the Baconsfield Park Commission, Mayor Charles L. Bowden presided. Minutes of the previous meeting were read and approved.

The Treasurer's statement, covering the period from May 30, 1945, to October 31, 1945, was read and approved.

The matter of equipment for both the playground and a zoo was discussed at some length and Mayor Bowden was asked to find out how much of this equipment could be secured from the Surplus Property Board of the Federal Government.

Resolutions, which had been prepared by Mrs. Frederick Williams and her Committee, on the death of former Chairman G. Glen Toole, were read. Upon proper motion by Mrs. Herbert Smart, seconded by Mrs. Kenneth Dunwody, these resolutions were adopted and are hereto attached as a part of these minutes. The Board recommended that copies of these resolutions be sent to the members of Mr. Toole's family and to the Mayor and Council of the City of Macon.

Mayor Bowden reported that the tablet, which is to be erected in memory of former U. S. Senator A. O. Bacon, was ready and would be installed in the near future. Mrs. Dunwody reported that the bearded iris would be planted after the tablet had been placed.

Mrs. Stanley Elkan, as commissioner of the Bibb County Girl Scout Council, addressed a letter to the Board, requesting the privilege of building a Scout house in Baconsfield Park. Acting Chairman Bowden appointed a committee, [561] composed of Dr. Lee, Mr. Smart and Mrs. Williams, to confer with Mrs. Elkan and work out, if pos-

sible, the details of this project, which would be presented to the Board at some future date for their consideration.

The matter of filling existing vacancies on the Board was then discussed. Upon motion made by Mrs. Kenneth Dunwody and seconded by Mr. Herbert Smart, Mr. C. E. Newton, Jr., was elected a new member. A motion was made by Mrs. Frederick Williams and seconded by Mrs. P. L. Hay that Dr. W. G. Lee be elected Chairman of the Board. Mr. Herbert Smart made a motion, which was seconded by Mrs. Frederick Williams, that Mr. C. E. Newton, Jr., be elected Secretary and Treasurer. All of the above elections were approved, subject to the approval of the Mayor and Council of the City of Macon.

Secretary and Treasurer W. G. Lee recommended that the firm of Murphey, Taylor & Ellis be selected to handle the property on the Southeast side of Spring Street, in conjunction with and for the Baconsfield Park Commission, with the exception only of the filling station which is under five year lease to the Wofford Oil Company at the present time.

Secretary & Treasurer W. G. Lee directed a letter to the Mayor & Council of the City of Macon, advising them of the action of the Board on this date and requesting their approval of same. He also expressed appreciation to the Mayor and Council for their fine co-operation in the past and assured them of the Board's determination, with their help, to handle this property in harmony with them and to develop same in keeping with the best interests of the present and future citizens of this city.

[562]

Respectfully submitted,

DR. W. G. LEE CH.
Secretary & Treasurer

Pres. L. Bowden
Acting Chairman

[563]

HONORABLE G. GLENN TOOLE

A MEMORIAL RESOLUTION

BY

THE BOARD OF MANAGERS OF "BACONSFIELD"

G. Glenn Toole was the Mayor of the City of Macon when the right to the possession and enjoyment of Baconsfield passed to the City and the first Board of Managers was created. It was largely through the efforts of Mr. Toole that the women and children of Macon became entitled to enjoy the benefits of this woodland and park at a date much earlier than would have been the case had the City authorities and the other interested parties waited until the time specified in the Will of the late Senator Bacon for the vesting of title and the transfer of possession from the Trustees of his estate.

Mr. Toole was elected a member of the first Board of Managers and throughout the more than twenty years of the existence of the Board was its Chairman.

While Mayor of the City of Macon, Mr. Toole inaugurated the program of beautifying the public parks of the City. He was a lover of flowers and all beautiful growing things, and the people of Macon and those who in the future will visit and enjoy the flowers, trees and shrubs in Baconsfield, will owe to Mr. Toole a debt of eternal gratitude.

We, the members of the Board of Managers, have missed his active participation and counsel during recent months when, because of illness, he was unable to attend our meetings, and now that he has gone, we shall feel even more keenly his absence. The least that we can do is to express our pleasure at having [564] been associated with him,

our deep appreciation for the things which he accomplished and our acknowledgment that his work with Baconsfield and the other public parks of the City of Macon was of the highest order.

BE IT THEREFORE RESOLVED that this little memorial be spread upon the Minutes of the Board of Managers of Baconsfield and that a copy be furnished by the Secretary of the Board to the members of his immediate family.

Respectfully submitted,

/s/ MRS. FREDERICK W. WILLIAMS
Chairman.

/s/ MRS. KENNETH DUNWODY

/s/ MRS. THOMAS J. STEWART

[565]

BACONSFIELD PARK COMMISSION
TREASURER'S STATEMENT FROM MAY 30, 1945
TO OCTOBER 31, 1945

INCOME RECEIPTS

Rents received from Wofford Oil Company from May 30, 1945 to October 31, 1945—June, July, August, Sept. Oct., rents @ \$65.00 per month	\$ 325.00
Rents received from J. J. Bowen Fruit Stand from May 30, 1945, to October 31, 1945—June, July, August, Sept. Oct., rents @ \$10.00 per month	50.00
Rents received from Mrs. Hedeman, 105 North Ave. from May 30, 1945, to October 31, 1945—June, July, August, Sept., Oct., rents @ \$25.00 per month	125.00
Total Receipts	<u>500.00</u>
Cash on hand as of May 30, 1945	2,554.17
	<u>\$3,054.17</u>

INCOME DISBURSEMENTS

May 30, 1945	To Sam Hall & Sons	\$500.00
August 2, 1945	To Idle Hour Nurseries Flowers for Toole Funeral	5.00
October 9, 1945	Premium on Insurance policy on 103 North Ave.	3.66
Bookkeeping fee from May 30, 1945 through October 31, 1945 @ \$5.00 per month		25.00
Total Disbursements		<u>533.66</u>
Cash on hand as of October 31, 1945		<u>\$2,520.51</u>

O.K.

W. G. LEE

[376]

Exhibit "A"

MINUTES

BOARD OF MANAGERS OF
BACONSFIELDcovering period February 18, 1946
through February 1, 1966

[377]

February 18, 1946.

The meeting of the Board of Managers of Baconsfeld was called to order by Dr. W. G. Lee, Chairman, in the Mayor's office, City Hall, at 10:00 A. M., Monday, February 18, 1946. The following members were present:

Dr. W. G. Lee, Chairman

Herbert I. Smart

Mrs. Kenneth Dunwody

Mrs. P. L. Hay, Sr.

Mrs. T. J. Stewart

C. E. Newton, Jr., Secretary and Treasurer

Mayor Charles L. Bowden attended by invitation.

The minutes of the meeting held November 1, 1945, were read and upon proper motion, which was duly seconded, they were approved. At the meeting held November 1, 1945, Dr. W. G. Lee was elected Chairman of the Board of Managers and C. E. Newton, Jr., was elected Secretary and Treasurer. In accordance with the terms of the Will of Senator A. O. Bacon, the election of these two as members and officers was approved at a meeting of the Mayor and Council of the City of Macon held on November 6, 1945.

Dr. Lee reported that the memorial for Senator A. O. Bacon was almost completed and would be placed in the park within a short period of time.

The Treasurer's report for the period from October 31, 1945, to February 18, 1946, showing income receipts of \$365.00 and disbursements of \$392.22 and a cash balance as of that date of \$2,493.29, was read in detail and, upon proper motion, was approved and is made a part of these minutes as follows:

[378]

INCOME RECEIPTS

Rents received from Wofford Oil Company from October 31, 1945—November, December, January and February at \$65.00 per month	\$ 260.00
Rents received from J. J. Bowen Fruit Stand from October 31, 1945—November, December, January @ \$10.00 per month	30.00
Rents received from Mrs. Hedeman, 105 North Ave., from Oct. 31, 1945—November, December and January @ \$25.00 per month	75.00
Total Receipts	\$ 365.00
Cash on Hand as of October 31, 1945	2,520.51
	<hr/> \$2,885.51

INCOME DISBURSEMENTS

Nov. 5, 1945, To Central Georgia Nurseries	\$234.83
Nov. 28, 1945, To W. D. Griffith, Insurance premium on 105 North Avenue	6.19
Dec. 10, 1945, To Heard Bros., for fertilizer	131.20
Bookkeeping fee from October 31, 1945, through February 28, 1946, @ \$5.00 per month	20.00
Total Disbursements	\$ 392.22
Cash on hand as of February 18, 1946	<hr/> \$2,493.29

The placing of the playground equipment in Baconsfield was left to the discretion of Mrs. George Beggs and Mrs. Kenneth Dunwody.

The parking of automobiles in the park and on the drive-ways has become quite a problem and in some instances dangerous. After some discussion, it was agreed to refer the matter to Mayor Bowden with the request that he have the City Engineer make a survey and recommend a solution.

The Chairman advised the board that top soil from the bottom lands of Baconsfield was being hauled to other parks in the city and it was requested that the Mayor see that this practice was discontinued.

Mr. Gus Sparks submitted a tentative drawing of a proposed master grocery store, fruit stand and drug store and requested that the Managers of Baconsfield name him a price at which they would lease the entire triangular portion between North Avenue and Emory Highway. The sketch of the proposed building was studied by the members of the Board of Managers and after some discussion it was agreed that the Chairman notify Mr. Sparks that a long time lease would be considered on the basis of \$250.00 per month for the rental of the ground.

Mr. Thad Murphey, of Murphey, Taylor & Ellis, appeared before the Board and presented a tentative proposal with reference to leasing the triangular tract of land between North Avenue and Emory Highway to One of the major oil companies which was interested in this location.

In view of both proposals, it was suggested that possibly the two parties could get together and work out suitable space for each project and submit the details to the Board for approval when they had reached an agreement.

[380]

There being no further business, the meeting adjourned.

Dr. W. G. Lee
Chairman

C. E. Newton Jr.
Secretary & Treasurer

[381]

BACONSFIELD PARK COMMISSION

TREASURER'S STATEMENT FROM OCTOBER 31, 1945
TO FEBRUARY 18, 1946

INCOME RECEIPTS

Rents received from Wofford Oil Company from October 31, 1945—November, December, January and February at \$65.00 per month	\$ 260.00
Rents received from J. J. Bowen Fruit Stand from October 31, 1945—November, December & January @ \$10.00 per month	30.00
Rents received from Mrs. Hedeman, 105 North Ave., from October 31, 1945—November, December and January @ \$25.00 per month	75.00
Total Receipts	<hr/> 365.00
Cash on hand as of October 31, 1945	2,520.51
	<hr/> 2,885.51

INCOME DISBURSEMENTS

Nov. 5, 1945 To Central Georgia Nurseries	\$234.83
Nov. 28, 1945 To W. D. Griffin insurance premium on 105 North Ave.	6.19
Dec. 10, 1945 To Heard Bros., for fertilizer	131.20
Bookkeeping fee from October 31, 1945 through February 28, 1946 @ \$5.00 per month	20.00
Total Disbursements	<hr/> 392.22
Cash on hand as of February 18, 1946	<hr/> \$2,493.29

[382]

Macon, Georgia.

June 3, 1947.

A special meeting of the Board of Managers of Baconsfield was called to order by Dr. W. G. Lee, Chairman, in the Mayor's Office, City Hall, at 4:00 P. M., Tuesday, June 3, 1947. The following members were present:

Dr. W. G. Lee, Chairman

Herbert I. Smart

Mrs. Kenneth Dunwody

Mrs. P. L. Hay, Sr.

C. E. Newton, Jr., Secretary and Treasurer

Mayor Charles L. Bowden and Mr. Clive James attended by invitation.

Minutes of the meeting held February 18, 1946, were read and, upon proper motion, which was duly seconded, they were approved.

The Chairman asked that the Treasurer's report for the period from February 18, 1946, to June 3, 1947, be read. A copy of this statement is hereto attached as part of the minutes. Income receipts for the period amounted to \$1,415.00 and disbursements totalled \$2,477.47. The report showed a balance to the credit of the account as of June 3, 1947, in the amount of \$1,430.82.

The members of the Board of Managers of Baconsfield were invited to attend a meeting of Mayor Charles L. Bowden and a number of his aldermen, which was held just prior to this meeting and was called for the purpose of discussing a proposed appropriation for a swimming pool to be erected on the Baconsfield property. At this meeting Dr. Lee told the members of the urgent need of a swimming pool in Macon and that he had observed that towns of only 20,000 people had, in many instances, [383] more than one pool.

He strongly urged that the members of Council appropriate a minimum of \$100,000.00 for the construction of a pool in Baconsfield.

Mrs. Dunwody reported that she and Mrs. Beggs had agreed on the proper location for placing the children's playground equipment in Baconsfield.

A letter to Mr. Cleveland James, Superintendent of Parks, from Mr. Wallace Miller was read to the joint meeting and, upon proper motion, a copy of this letter is to be incorporated in the minutes as follows:

"May 31, 1947

"Mr. Cleveland James
Superintendent of Parks
North Avenue
Macon, Georgia

Dear Cleveland:

The writing of this letter to you I have had in mind for several years, but on account of first one thing and then another, have never gotten around to it.

Ordinarily, whatever the holder of a public office does that the people approve, is simply taken for granted; but any little thing he might do which the people disapprove, brings immediate criticism and condemnation, and entirely offsets all the good things he may have ever done.

Then again I think we are too prone to wait until a man dies to say any good things about him. Everybody, including the members of the family, discounts post-mortem eulogies of the deceased.

[384] So while you are still with us, and in full possession of your mental faculties and in the enjoyment of apparent robust health, I want to say that your development of Baconsfield Park has been an outstanding job for which

all of our people should be grateful to you. When the azaleas were in full flower I went all over this park and admired its marvelous beauty. In the growing of camellias, azaleas, roses and iris, I claim that you are an expert.

While this park is the one spot that I frequently hear referred to as "Cleveland James' heart," I do not agree with some folks who think the other parks have been neglected. In my opinion you have done an overall splendid job as our Superintendent of Parks.

Faithfully yours

(Signed) Wallace Miller"

Our Board also commended Mr. Cleveland James for the splendid work he was doing and had done over the period of years in taking care of not only Baconsfield but the city parks as a whole.

There being no further business, the meeting adjourned.

Dr. W. G. Lee
Chairman

C. E. Newton Jr.
Secretary & Treasurer

[385]

BACONSFIELD PARK COMMISSION

TREASURER'S STATEMENT FROM FEBRUARY 18, 1946
TO JUNE 3, 1947

INCOME RECEIPTS

Rents received from Wofford Oil Company from February 18, 1946, to June 3, 1947 @ \$65.00 per month	\$ 975.00
Rents received from J. J. Bowen Fruit Stand from February 18, 1946, to June 3, 1947 @ \$10.00 month	150.00
Rents received from Mrs. Hedeman, 105 North Ave., for February, March, April, May, June, July, August & September, 1946 @ \$25.00 month	200.00
Rents received from W. F. Brown, Emory Highway @ \$30.00 month—December, 1946, Jan. & Feb. 1947	90.00
Total Receipts	1,415.00
Balance as of February 18, 1946	2,493.29
	<hr/> 3,908.29

INCOME DISBURSEMENTS

3-19-46	To Central Cotton Oil Co.	47.52
4- 8-46	To A. O. B. Sparks, survey of Emory Highway property	20.00
7- 6-46	To Heard Bros. for fertilizer	24.00
10-21-46	To W. D. Griffith & Son policy on 103 North Ave.	3.66
11-12-46	To W. D. Griffith & Son policy on 105 North Ave.	6.19
12-30-46	To City of Macon for cotton seed meal	101.20
1-10-47	To Heard Bros. for fertilizer	160.90
	To City of Macon for paving	2,000.00
2-13-47	To T. C. James painting & lettering stop signs	5.00
2-14-47	To Macon Board of Realtors for appraisal of land	30.00
3-26-47	To W. W. Crooms for fertilizer	24.00
	To Bank for bookkeeping from February 18, 1946 through December 31, 1946 @ \$5.00 mo.	55.00
	Total Disbursements	<hr/> 2,477.47
	Balance as of June 3, 1947	<hr/> 1,430.82

[386]

Macon, Georgia
August 4, 1947.

A special meeting of the Board of Managers of Baconsfield was held in Mayor Bowden's office, City Hall, at 11:00 A. M., Monday, August 4, 1947. The following members were present:

Dr. W. G. Lee, Chairman
Herbert I. Smart
Mrs. P. L. Hay, Sr.
Mrs. Tom Stewart
Mrs. Frederick Williams
C. E. Newton, Jr., Secretary & Treasurer.

Mayor Charles L. Bowden, John A. Jones and Dan L. Tidwell attended by invitation.

Minutes of the meeting held June 3, 1947, were read and, upon proper motion, which was duly seconded, they were approved.

The Treasurer's report for the period from June 3, 1947, to August 4, 1947, showing income receipts of \$215.00 and income disbursements of \$335.45, leaving a balance as of August 4, 1947, of \$1310.37, was read as information to the Board.

The contract for the construction of the swimming pool in Baconsfield was discussed and, upon proper motion, the following resolution for letting the contract and the construction of the pool was unanimously passed:

"A RESOLUTION"

"BY THE BOARD OF MANAGERS OF BACONSFIELD"

"WHEREAS, The City of Macon desires to construct a swimming pool for the use of the white residents of the City of Macon and has selected as the most suitable site therefor a portion of Baconsfield lying east of

[387] Boulevard Baconsfield, sometimes called North Avenue; and.

"WHEREAS, the Mayor and Council of the City of Macon has appropriated for the construction of such swimming pool, the sum of One Hundred Thousand (\$100,000.00) Dollars, and has offered to turn over the fund so created to the Board of Managers of Baconsfield, so that the said Board of Managers can arrange for the construction and operation of such swimming pool pursuant to the powers vested in said Board by the last will and testament of A. O. Bacon, late of Bibb County, deceased;

"BE IT THEREFORE RESOLVED by the Board of Managers of Baconsfield, in meeting duly assembled, that said Board do accept from the said City of Macon, the said fund of One Hundred Thousand (\$100,000.00) Dollars, the same to be held by the Board of managers in a separate account and as a separate fund and used solely for the purpose of construction of such swimming pool and for the acquisition of all necessary or desirable accessories and buildings in connection therewith.

"BE IT FURTHER RESOLVED, that the Chairman of this Board, Dr. W. G. Lee, and the Secretary-Treasurer of this Board, C. E. Newton, Jr., together with John A. Jones, who is at present Chairman of the Finance Committee of the Council of the City of Macon, and Dan L. Tidwell, who is at present the Chairman of the Recreation Committee of said Council, both of whom have manifested great interest in the construction of said swimming pool upon the said site in Baconsfield, be and they are hereby designated as the Agents of this Board charged with the construction of such swimming pool and adjacent buildings and the acquisition of ac-

cessories necessary [388] thereto, the disbursements of said trust fund to be exclusively within the power and control of the said Secretary-Treasurer of this Board, acting in their official capacities, who shall make such disbursements, however, pursuant only to plans and contracts for such swimming pool, buildings and accessories as have been approved by the said Committee of agents or a majority of them."

It was reported to the Board that the house on North Avenue, formerly occupied by Mrs. Hedeman, was now vacant and authority was given to Dr. Lee, Chairman, and C. E. Newton, Jr., Secretary & Treasurer, to dispose of same to the best advantage.

A request was received from Wofford Oil Company, asking an extension of their lease on the property located at the corner of North Avenue and Emery Highway for a period of ten years from January, 1955. After some discussion, it was agreed that the lease be extended for the ten-year period from January 1, 1955, at a rental of \$75.00 per month, which was an increase of \$10.00 per month over the present monthly rental.

Two bills for attorneys' fees, one in the amount of \$25.00 and the other for \$50.00, from Gus Sparks, were approved for payment.

Dr. Lee advised the Board that he had located some azaleas for planting in the Park and the cost would be approximately \$114.00. This amount was approved for payment.

There being no further business, the meeting adjourned.

Dr. W. G. Lee
Chairman

C. E. Newton Jr.
Secretary & Treasurer

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BACONSFIELD PARK COMMISSION
TREASURER'S STATEMENT FROM JUNE 3, 1947
TO AUGUST 4, 1947

INCOME RECEIPTS

Rents received from Wofford Oil Company from June 3, 1947 to August 4, 1947 @ \$65.00 per month	\$ 195.00
Rents received from J. J. Bowen Fruit Stand from June 3, 1947 to August 4, 1947	20.00
Total Receipts	\$ 215.00
Balance as of June 3, 1947	1,430.82
	\$1,645.82

INCOME DISBURSEMENTS

7- 3-47 To Peeler Hardware Co.	303.45
7-15-47 Municipal Court of City of Macon —evicting Mrs. Hedeman	4.00
7-15-47 Jones, Jones & Sparks, re evicting Mrs. Hedeman	25.00
7-29-47 Swimming Pool Data and Reference Annual	3.00
Total Disbursements	335.45
Balance as of August 4, 1947	\$1,310.37

[390]

Macon, Georgia
October 16, 1947

A special meeting of the Board of Managers of Baconsfield was held in Mayor Bowden's office, City Hall, at 11:00 A. M., on Thursday, October 16, 1947. The following members were present:

Dr. W. G. Lee, Chairman
Herbert I. Smart
Mrs. P. L. Hay, Sr.
Mrs. Tom Stewart
Mrs. Frederick Williams
C. E. Newton, Jr., Secretary & Treasurer

Mayor Charles L. Bowden, Mayor-Elect Lewis B. Wilson and Stanley Elkan, Chairman of the incoming Finance Committee of the City of Macon, together with John A. Jones and Dan Tidwell, the latter two being members of the Committee to serve on the construction of the swimming pool, attended by invitation.

The minutes of the meeting held August 4, 1947, were read and upon proper motion, which was duly seconded, they were approved.

The Treasurer's report for the period from August 4, 1947, through October 16, 1947, showing income receipts of \$1,205.00 and disbursements of \$189.00, leaving a balance as of October 16, 1947, of \$2,326.37, was read as information to the Board.

The proposed lease with Charles E. Nash for the triangular portion of Baconsfield located between North Avenue and Emory Highway was read in detail and fully discussed. The lease was drawn by A. O. B. Sparks, Attorney

for the Board of Managers of Baconsfield and upon proper motion, which was duly seconded, was unanimously adopted. A copy of this lease [391] is attached to and made a part of these minutes.

The matter of a three year lease with Mr. W. F. Brown on the fruit stand which he erected, facing on Emery Highway, was discussed and the Board agreed to offer Mr. Brown a three-year lease at \$30.00 per month provided all past due rentals were paid up to date.

Due to the fact that Mr. Cleve James would have to vacate the house which he had been occupying for a number of years, the Board recommended that Mr. James be given the sum of \$50.00 per month toward the rental of a home and upon proper motion, which was duly seconded, the following resolution was passed:

"In consideration of the valuable services rendered in the maintenance and upkeep of Baconsfield and the surrender upon request of the premises occupied at the present by Mr. Cleveland James, we recommend that he be given the sum of \$50.00 per month toward the rental of a home and that this be done for the period of six months, with the right to renew same for similar periods so long as his relationship with the Board proves satisfactory to the Board."

The payment of attorneys fees in the amount of \$125.00 for drawing the lease contract between the Board of Managers and Charles E. Nash and the payment of attorneys fees not exceeding \$250.00 for preparing and presenting a court order to clarify the legal right of the Board of Managers to lease the property to Charles E. Nash were approved.

The matter of appropriating \$40,000.00 for the construction of a bath house was discussed with Mayor-Elect Wilson, Stanley Elkan and Dan Tidwell, members of the incoming City Council. These gentlemen assured the Board of Managers of Baconsfield that they would co-operate to the fullest in appropriating sufficient funds for the construction of the [392] bath house and improving the parking area and grounds around the swimming pool.

There being no further business, the meeting adjourned.

Dr. W. G. Lee
Chairman

C. E. Newton Jr.
Secretary & Treasurer

[393]

BACONSFIELD PARK COMMISSION
TREASURER'S STATEMENT FROM AUGUST 4, 1947
OCTOBER 16, 1947

INCOME RECEIPTS

Rents received from Wofford Oil Company from August 4, 1947 to October 16, 1947 @ \$65.00 per month—Sept. & Oct.	\$ 130.00
Rents received from J. J. Bowen Fruit Stand from August 4, to October 16, 1947 @ \$10.00 per month—July, Aug. & September	30.00
Rents received from W. F. Brown, Emory Highway Fruit Stand @ \$30.00 per month—March & 1/2 April	45.00
Partial Reimbursement from City of Macon for paving in Baconsfield	1,000.00
Total Receipts	\$1,205.00
Balance as of August 4, 1947	1,310.37
	<u>\$2,515.37</u>

INCOME DISBURSEMENTS

8-15-47 To Jones, Jones & Sparks for preparation of resolution re Swimming Pool	\$ 25.00
To Jones, Jones & Sparks in re Bibb County Board of Education Open Air School	50.00
10- 7-47 To Calvin Harman Nurseries for purchase of Azaleas plus delivery charges	114.00
Total Disbursements	189.00
Balance as of October 16, 1947	<u>\$2,326.37</u>

[402]

May 6, 1953.

A special meeting of the Board of Managers of Baconsfield was held on Wednesday, May 6, 1953, at 5:00 P. M., at the Baconsfield Club House. This Meeting was called by C. E. Newton, Jr., Secretary & Treasurer, for the purpose of considering the plans and specifications prepared by Mr. John Leon Hoffman for the further beautification of Baconsfield. The members in attendance were as follows:

Mr. Herbert I. Smart
Mrs. Kenneth W. Dunwody
Mrs. P. L. Hay
Mrs. Frederick W. Williams
Dr. W. G. Lee
C. E. Newton, Jr.

Mayor Lewis B. Wilson, Mr. Cleveland James and Mr. Joe Witherington attended by invitation.

Mr. J. Leon Hoffman presented the plans and specifications to the Board, and, after some discussion, the Board approved the plans as submitted. Mr. Hoffman's charge of \$1,500.00 for the plans and specifications was also approved and the Treasurer authorized to make payment.

Dr. W. G. Lee tendered his resignation as Chairman and a member of the Board of Managers of Baconsfield. His letter of resignation incorporated as a part of these minutes is as follows:

"Mr. C. E. Newton,
Secretary and Treasurer
Baconsfield Park Commission
Macon, Georgia

Dear Friend:

I herewith tender my resignation as Chairman of the
[403] Baconsfield Park Commission. My years of service

have been a source of genuine pleasure and the cooperation and confidence of the entire committee has been and will continue to be a source of genuine satisfaction to me. With the present popularity of the property and with the guidance of our committee in the future, I feel that its field of service will grow ever bigger and better.

Assuring you of my genuine appreciation for the privilege of having worked with this committee in one or other capacities since the beginning of the committee's service, I remain

Yours very truly

(Signed) Dr. W. G. Lee"

Dr. Lee's resignation was accepted with regret and all of the members expressed their deep appreciation for the fine work done by him in planning and supervising the planting of Baconsfield, and for his untiring energy and thoughtful planning in making Baconsfield one of the outstanding municipal parks in the Southeast.

[404]

June 25, 1953.

A special meeting of the Board of Managers of Baconsfield was held on Thursday, June 25, 1953, at 4:30 P. M., in the Directors' Room of The First National Bank & Trust Company in Macon. The members in attendance were as follows:

Mr. C. E. Newton, Jr., Chairman
Mrs. T. J. Stewart
Mrs. Frederick W. Williams
Mrs. Kenneth W. Dunwody
Mrs. Herbert I. Smart

Mr. A. O. B. Sparks, Attorney for the Board, attended by invitation.

The Chairman requested Mrs. Kenneth W. Dunwody to act as Secretary for this meeting.

Minutes of the meetings held on April 9, 1951, and May 6, 1953, were read and approved.

A Statement of Cash Receipts and Disbursements for the period from April 1, 1951, through May 7, 1953, was read by the Chairman and, upon proper motion, approved and made a part of the minutes. The total receipts for the period from April 1, 1951, through May 7, 1953, amounted to \$11,211.65 and the disbursements amounted to \$4,507.13, leaving a difference between receipts and expenditures of \$6,704.52. The income cash balance in the amount of \$7,353.94 which was carried forward as on March 31, 1951, together with the receipts over disbursements for the above mentioned period, less commission at 5% on rents received less collection fees charged amounting to \$538.25, left a balance as of May 7, 1953, of \$13,520.21.

A report from Mr. Frank Branan, Treasurer of the City of Macon, in regard to income and expenditures in connection [405] with the operation of Baconsfield swimming pool, was read as information to the Board.

A request from Dr. Milford B. Hatcher, Chairman of the Board of Deacons of Highland Hills Baptist Church, for the use of Baconsfield Club House as a temporary meeting place during the construction of their proposed church building was presented to the Board by Mr. C. E. Newton, Jr., Chairman. Mrs. Kenneth W. Dunwody opened the discussion by reading a letter which she had previously directed to Mr. C. E. Newton, Jr., a copy of which had been sent to each member of the Board, in which she indicated that, according to her interpretation, the use of the club house for religious worship was not "inconsistent with the philanthropic spirit of Senator Bacon's Will and the definition in Webster's dictionary of 'pleasure' ground". Mr. A. O. B. Sparks, Attorney and legal counsel for the Board of Managers, quoted that part of Item IX of the Will of Senator Bacon relating to this property, which reads as follows:

(1) "it is my will that all right, title and interest in and to said property hereinbefore described and bounded, both legal and equitable, including all remainders and reversions and every estate in the same of whatsoever kind, shall thereupon vest in and belong to the Mayor and Council of the City of Macon, and to their successors forever, in trust for the sole, perpetual and unending, use benefit and enjoyment of the white women, white girls, white boys and white children of the City of Macon to be by them forever used and enjoyed as a park and pleasure ground, subject to the restrictions, government, management, rules and control of the Board of Managers hereinafter provided for; the said property under no circumstances, or by any authority whatsoever, to be sold or alienated or disposed of, or at any time [406] for any reason devoted

to any other purpose or use excepting so far as herein specifically authorized."

According to Mr. Sparks' interpretation of the Will, with special emphasis on the words, "in trust for the *sole*, perpetual and unending, use, benefit and enjoyment of the white women, white girls, white boys and white children of the City of Macon to be by them forever used and enjoyed as a park and pleasure ground" and "under no circumstances" or "at any time for any reason devoted to any other purpose or use excepting so far as herein specifically authorized", he was very definitely of the opinion that this property should not be used for church services since its use for this purpose could interfere with its enjoyment as a park and pleasure ground for the white children of Macon.

Mr. Sparks states that it was his considered opinion that neither the Board of Managers nor anyone else had any right or power to permit the use of that portion of Baconsfield, which under the terms of the Will cannot be devoted to the purpose of raising revenue, to any use other than that definitely set forth in the Will, that is, for use as a park and pleasure ground; that the use of the Woman's Clubhouse for religious services could not under any proper view be considered as coming within such designation. In that view Mr. Newton concurred at some length.

Both Mr. Sparks and Mr. Newton emphasized the fact that the Board of Managers of Baconsfield are acting in the capacity of Trustees under the Will of A. O. Bacon and, therefore, responsible for carrying out the wishes of the Testator as expressed in his Will.

[407] Mrs. Frederick W. Williams and Mrs. T. J. Stewart, as well as Mrs. Kenneth W. Dunwody, were of the

opinion that the request of the Highland Hills Baptist Church should be granted. Mr. Herbert I. Smart admitted that he understood Mr. Sparks' reason for his interpretation of the Will of A. O. Bacon and agreed to the correctness of his legal opinion, but that, nevertheless, he was in favor of giving the church permission to use the club house.

It was moved by Mrs. Kenneth W. Dunwody that the request of Dr. Milford B. Hatcher, Chairman of the Board of Deacons of the Highland Hills Baptist Church, for use of Baconsfield Club House as a meeting place for their church, be granted. The motion was duly seconded by Mrs. Frederick W. Williams and, upon being put to a vote, was carried, Mr. C. E. Newton, Jr., voting in the negative. Upon recommendation by Mrs. T. J. Stewart, it was decided that the length of time for the use of this property by the church be limited to twelve months, with possible extensions if their proposed church building could not be completed within that period. Also, the Board agreed that any future requests for use of the club house should be handled, as heretofore, by the Baconsfield Club House Commission, the governing body of the present club house owners.

Upon request by the Board, Mr. C. E. Newton, Jr., agreed to submit, within the next thirty days, bids from three contractors as to the cost of grading and other work necessary to carry out the plan submitted by Mr. J. L. Hoffman for the improvement of Baconsfield.

A regular time for meetings of the Board was discussed, and it was agreed that they should be held semi-annually on the second Thursday in March and September of each year.

[408] Tentative suggestions were made in regard to a new member of the Board to be elected to succeed Dr. W. G. Lee. Several names were discussed and Mr. Newton was requested to contact Mr. Frank Willingham. The fact that it would be necessary for anyone selected to be approved

by City Council was also brought to the attention of the Board. (Mr. Frank Willingham's election confirmed by Council on 4-20-54. Letter in file)

The planting of bulbs and other shrubbery for the beautification of Baconsfield Park was discussed. It was agreed that this matter be left to the discretion of Mrs. Stewart and they were requested to take charge of this project.

Upon motion by Mr. Smart, the meeting was adjourned.

C. E. NEWTON JR.	MRS. KENNETH W. DUNWODY
C. E. Newton, Jr., Chairman	Mrs. Kenneth W. Dunwody, Acting Secretary

[409]

BACONSFIELD PARK

Statement from April 1, 1951 through May 7, 1953

Income Receipts

Rents from Wofford Oil Co.		1,690.00
Bowen Rents	875.00	
Less R/E Agent's Commission	31.88	843.12
Variety Store	1,250.00	
Less Collection Fees	5.75	1,244.25
Charlie Nash	2,600.00	
Less Collection Fees	5.75	2,594.25
Kiddy Land		1,102.03
Cranford & Ridley	1,950.00	
Less Collection Fees	6.25	1,943.75
Baconsfield Pharmacy	1,800.00	
Less Collection Fees	5.75	1,794.25
		<u>11,211.65</u>
Income Balance 3-31-51		7,353.94
		<u>18,565.59</u>

Disbursements

Commission to bank—5-25-48 thru 3-31-51		
\$506.37 less \$120.00 already paid less collection fees		370.87
Boone Ins. Co. premium paid May 1961 and May 1952 on Concession Stand		124.30
Painting and repairs to Clubhouse		750.00
A. M. Grootendorst, Benton Harbor, Mich. for Narcissus and Dutch Iris		243.47
Railway express on shipment from Benton Harbor, Mich		33.22
Davenport Guerry Nursery for 175 Sasanquas		356.25
McKesson & Robbins, Iron Sulphate	30.00	
" " " Sprays, Epson		
" " " Salts, Sulphur		
" " " & Iron Sulphur	95.06	125.06
Karsten & Denson—3 tons Reliance		189.00
Abbot's Sunny Knoll Nursery—24 Sasanquas		18.48
Anderson Tractor & Equipment for mower		329.75
Atwood Rose Nursery—600 roses		228.00
Railway express on roses—Tyler, Texas		25.43
Timberlake Groc. Azalea & Camellia Fertilizer		213.30
John Leon Hoffman—Plans		1,500.00
		<u>4,507.13</u>
Commission @ 5% on rents received less collection fees charged		538.25
Income Balance as of May 7, 1953		<u>\$13,520.21</u>

[413]

June 24, 1954

A special meeting of the Board of Managers of Baconsfield was held on Thursday, June 24, 1954, at 3:30 P. M., in the Directors' room of The First National Bank & Trust Company in Macon. The members in attendance were as follows:

Mr. C. E. Newton, Jr., Chairman
Mrs. Frederick W. Williams
Mrs. Kenneth W. Dunwody
Mrs. T. J. Stewart
Mrs. P. L. Hay, Sr.
Mr. Herbert I. Smart
Mr. Frank M. Willingham.

Minutes of the meetings held on June 25, 1953, and December 17, 1953, were read and approved.

A Statement of Cash Receipts and Disbursements for the period from May 8, 1953, through May 10, 1954, was read and approved and made a part of the minutes. The total receipts for the period from May 8, 1953, through May 10, 1954, amounted to \$5,810.07 and the income cash balance which was carried forward as of May 8, 1953, amounted to \$13,520.21, making a total of \$19,330.28. This amount, less total disbursements for the period of \$12,131.89, which includes \$257.86 commission to the bank at 5% on net rentals of \$5,157.17, left a balance as of May 10, 1954, of \$7,198.39.

The renting of the Open Air School to the City of Macon for \$25.00 per month on a year to year basis was discussed. It was stated that this building was to be used as a meeting place for the Happy Hour Club, which is composed of a group of elderly people in Macon. A motion by Mr. Herbert Smart, seconded by Mrs. Frederick Williams, to the effect that this yearly lease be approved, was unanimously carried.

[414] The Board discussed a request from the State Highway Department for widening the right-of-way in front of Baconsfield Club House to the extent of approximately 40 feet. This will necessitate cutting down the oak

tree, another Magnolia and moving the Colonial Dames' monument, together with the marker of Dr. W. G. Lee Boulevard. Mr. Herbert Smart moved that the right-of-way be granted provided the City of Macon would consent to have Lee Boulevard made into a two-way drive. This motion was seconded by Mr. Frank Willingham and unanimously carried, with the provision that Mr. Newton ask that the following conditions be complied with:

1. Remove the cedar tree near the club house and grade the knoll level with the other area.
2. Move the Colonial Dame's monument which is next to the highway to a location acceptable to that group.
3. Move the brick pilaster marking Dr. W. G. Lee Boulevard to another location.
4. Regrade the area in front of Baconsfield so that it will slope toward the highway.
5. Construct concrete sidewalk across the entire area up to Nottingham Drive.
6. Work out satisfactory traffic controls whereby a left turn can be made at Lee Boulevard.

Mr. Newton suggested to the Board that they discuss whether or not they would like to petition the City to move the zoo to some other location, either in Baconsfield or elsewhere. A motion was made by Mrs. Kenneth Dunwoody that the City be asked to relocate the zoo in Baconsfield. This motion was seconded by Mr. Herbert Smith and carried. It was the opinion of the Board that the location suggested by Mr. Leon Hoffman, who formulated the overall beautification plan for Baconsfield, would be preferable. Mr. Hoffman suggested [415] that the zoo be moved on the hill where the Georgia Power Company high tension wires are located and between there and the river.

The subject of additional planting of trees, shrubbery and flowers was discussed and it was decided that pro-

professional help would be necessary for replacement of trees and large shrubbery in view of the tremendous amount of tornado damage. Mr. Newton appointed the four ladies on the Board as a Committee to employ professional help and work out plans for the planting of the area in front of the Club House. They were to elect their own chairman and when prices were secured on completing the necessary work, it was to be submitted to the Board for approval.

The responsibility of security prices for entrance gateways to the Baconsfield property was delegated to Mr. C. E. Newton. It was suggested that these gateways conform to the architecture of the Club House.

Mr. Newton stated that he had been approached by Mrs. W. T. Wood with reference to a site for locating a garden center in Baconsfield, and that he had a conference with the Presidents of the three women's clubs who now own the Baconsfield Club House to ascertain if they would be interested in selling their interests. A communication had been received from the Woman's Club in which they stated that they would not be interested in a sale, but the other clubs had not advised him as to their decisions, the Pilot Club having asked for an extension of time in which to consider it. It was Mr. Newton's thought that the Women's Club might reconsider if the other two clubs were interested in a sale and he suggested that if the various garden clubs would co-operate and provide a substantial part of the necessary funds for the purchase price, that the Board of Managers of Baconsfield would consider making a contribution toward the purchase price. Also, there was some [416] discussion about the garden clubs becoming co-owners and co-operators with the present owners of the Club House.

There being no further business, the meeting adjourned.

C. E. NEWTON JR.	MRS. KENNETH DUNWODY
C. E. Newton, Jr., Chairman	Mrs. Kenneth W. Dunwody, Secretary

[417]

STATEMENT BOARD OF MANAGERS OF BACONSFIELD

May 8, 1953, through May 10, 1954.

INCOME RECEIPTS

Rent from Wofford Oil Co., 12 months @ \$65.00 per month		\$ 78
" " Bowen's Fruit Stand to March 15, 1954,	\$410.00	
Less Real Estate Agent's Commission	20.50	38
" " Baconsfield Kiddy Land		25
" " Dairy Queen, 12 months @ \$75.00 per month		90
" " Open Air School Building, 1 month @ \$25.00		2
" " Charlie Nash, 12 months @ \$225.00 per month		2,70
" " Part of a month		12
Sale of timber from trees damaged by tornado on 3-13-54		64
Total		\$ 5,81

DISBURSEMENTS

Boone Realty & Insurance Co., fire insurance premium on Open Air School	\$ 27.36
Georgia Blue Print Co., & J. L. Hoffman, Inc., Additional blue prints for use in securing bids on grading and for use of members	8.40
Mrs. Kenneth W. Dunwoody, reimbursement for bulbs purchased	91.57
Railway Express Co., Express charged on blubs	16.30
B. M. Richardson, planting winter grass in area in front of Baconsfield Club House	50.00
R. A. Bowen, Inc., Grading as per contract approved by Board	10,660.00
C. W. Farmer Co., Chain and pipe for use along front drive	49.45
Karsten & Denson Co., Winter grass & seed sower	173.80
H. C. Marshall, fertilizer for shrubbery planted around Baconsfield Club House	15.00
C. C. Cato's Nursery, for new shrubbery planted around Baconsfield Club House	12.36
Phillips Garden Mart, for new shrubbery planted around Baconsfield Club House	100.99
Ed Knapp Chain Saw Co., power saw for use in cutting trees damaged by tornado	274.50

(Disbursements—continued)

Timberlake Grocery Co., 3 tons of Vigoro for Camellias and Azaleas	213.30	
Winerville Painting & Decorating Co., for painting concrete benches	180.00	
Mason Blue Print Co., Blue prints for swimming pool and area East of North Avenue	1.00	
Commission to Bank at 5% on net rentals of \$5,157.17	257.86	
		<hr/>
Total Disbursements		\$12,131.89
Income Balance, May 8, 1953		\$13,520.21
Income Receipts for period from May 8, 1953, thru May 10, 1954.		5,810.07
		<hr/>
Total		\$19,330.28
Less Disbursements for the above period of		12,131.89
		<hr/>
Income Balance as of May 10, 1954,		\$ 7,198.39
Present balance (6-24-54)	\$7,564.04	

May 5, 1955.

[418]

A meeting of the Board of Managers of Baconsfield was held on Thursday, May 5, 1955, at 3:30 P.M., in the Directors' room of The First National Bank & Trust Company in Macon. The members in attendance were:

Mr. C. E. Newton, Jr., Chairman
Mrs. Frederick W. Williams
Mrs. Kenneth W. Dunwody
Mrs. T. J. Stewart
Mrs. P. L. Hay
Mr. Herbert Smart
Mr. Frank M. Willingham

Minutes of the meeting held on June 24, 1954, were read and approved.

A statement of Cash Receipts and Disbursements for the period from May 11, 1954, through April 30, 1955, was read and approved and made a part of the minutes. Mr. Herbert Smart moved that this statement be accepted. This motion was seconded by Mrs. Kenneth Dunwody and unanimously carried.

The question of re-opening that portion of Lee Boulevard which had been closed in order to carry out the overall plan for improvement and beautification of Baconsfield was discussed at length. The Board was advised that the petition which had been signed by numerous Macon citizens was drawn and filed with the City officials by Mr. Lawton Miller, Attorney for a group of residents in North Highlands and Shirley Hills. It has been ascertained that many of the people who signed the petition were residents of a section of the City which was not affected by the traffic problem in the North Highlands and Shirley Hills area, this problem having been created by the temporary closing of North Avenue during construction of the highway. The road through Baconsfield [419] was originally closed to carry out the overall beautification program, and former Mayor

Wilson and the Assistant City Engineer and Superintendent of the City Parks gave their consent. It was also stated that the City has no authority to make any changes in the Park without the consent of the Board of Managers of Baconsfield. Each member of the Board expressed his or her personal opinion on the subject. It was thought that the re-opening of this driveway and its use as a short cut or thoroughfare would create a dangerous situation for children who play in the Park. Mrs. Frederick Williams stated that she had always regretted the closing of the driveway as she felt that people derived much pleasure from their drives through that section of the Park. After much deliberation, the question was put to a vote and all members were in favor of leaving the driveway closed with the exception of Mrs. Williams, who voted in the negative.

In view of the fact that a great deal of publicity had been given this matter, some of which was unfavorable, it was the decision of the Board that a letter should be addressed to the Editor of the Macon Telegraph, as well as the Editor of the Macon News, in which the position of the Board of Managers of Baconsfield should be explained and reasons given for their decision.

The Board was advised that the Federated Garden Clubs of Macon would like to construct their building at the corner of Nottingham and Parkview Drives, facing Parkview Drive. It was the consensus of opinion that this building should be far enough back from the street to eliminate any parking hazard and that no parking should be allowed in front, the road to be kept clear at all times. This location was agreed upon and it was the decision of the Board that a contract should be executed and members of the Board should work with representatives from the Federated Garden Clubs in deciding on the [420] exact location.

A suggestion was made that if anyone should call any member and try to get a commitment on any question, they

should be told that it was necessary to decide these things in meeting before expressing an individual opinion.

The possibility of making an additional parking area down by the lily pool was discussed. The Board was advised that Mayor B. F. Merritt had said the City would clear that area so that about 150 to 200 cars could be parked there. This suggestion was unanimously agreed upon.

The recreational area between the Baconsfield Club House and Nottingham Drive was discussed. The Board was advised that the City Engineers had advised nothing could be done with reference to filling in this space unless it was drained. Mayor B. F. Merritt also had agreed that the City would help with this project. Mr. Smart moved that the Chairman look into this matter and obtain figures to bring before the next meeting as to the cost of having this area drained. This motion was seconded by Mrs. Hay and unanimously carried.

The Board also approved the request of the Little League Baseball Association to erect a regulation cyclone fence at the present site of the ball diamond, provided they will give us a letter to the effect that they will move it without cost to the Board of Managers when the play area has been graded and completed.

A suggestion was approved that the site of the Open Air Theatre, which, at the present time, has only outside wall foundations and is grown up in shrubs and trees, be cleared and the brick and concrete removed.

A right-of-way through the front of the park for a drain ditch to take water down to the river was approved.

[421] Upon being advised that Mrs. Bowen was six months in arrears with her rent and no new contract had been signed, the Board agreed that she should be asked to get a new location within a 90-day period.

Mrs. Dunwody suggested that the avenue of oaks be named "The Cleveland James Avenue of Oaks" and that a bronze marker be erected, bearing an inscription that this

was in appreciation of Mr. James' services in the Macon parks, especially Baconsfield. The Board was unanimous in their agreement that this should be done and the ladies were requested to get the marker. After some discussion as to remuneration for Mr. James, the Board having been advised that he had received none from the Board for about four or five years, Mr. Smart moved that \$1,000.00 be paid Mr. James in a lump sum for past services and what has been accomplished up to date. This motion was unanimously carried.

Entrance gates to the park were discussed, but in view of the fact that prices which had been obtained were considered too high, it was decided that this matter should be postponed. In the discussion, the fact was brought out that the Highway Department had agreed to replace the one entrance pilaster marking W. G. Lee Boulevard.

The Emery Highway marker which was destroyed by Charlie Nash was also discussed. The Board decided that this marker should be replaced on Baconsfield land and Mr. Newton agreed to get some prices on a new marker.

The Board was informed that the A. & P. Tea Company would like to lease the site in the rear of the Dairy Queen which is the present location of the Happy Hour Club. After some discussion, it was decided that a letter should be written to Mayor B. F. Merritt, requesting that a new location for the Happy Hour Club be obtained within ninety days.

[422] After the conclusion of the business session, Mr. Frank Willingham expressed his appreciation to the Board for allowing the Highland Hills Baptist Church to meet in the Baconsfield Club House during the time their church building was under construction.

The meeting was then adjourned.

C. E. NEWTON JR.

PAULINE H. DUNWODY

C. E. Newton, Jr., Chairman Mrs. Kenneth W. Dunwody,

Secretary

[423]

STATEMENT
BOARD OF MANAGERS OF BACONSFIELD

May 11, 1954 through April 30, 1955

INCOME RECEIPTS

Rent from Pure Oil Co., 7 months @ \$65.00 and 5 months @ \$75.00		\$ 830.00
" " Bowen's Fruit Stand to Nov. 15, 1954	277.00	
Less Real Estate Agent's Comm.	13.85	263.15
" " Dairy Queen, 12 months @ \$75.00		900.00
" " Open Air School, 11 months @ \$25.00		275.00
" " Charlie Nash, 11 months @ \$225.00		2,475.00
Total		<u>\$ 4,743.15</u>

DISBURSEMENTS

Boone Realty & Insurance Co., fire insurance premium, 125 Emery Highway	23.10	
Cleveland James for payment to 3 men @ 85¢ per hour	81.60	
Thos. H. Hall, III for appraisal 200 Spring Street	65.00	
Ingleside Nurseries for 42 water oaks	324.45	
T. C. James for telephone call to McMinnville, Tennessee	2.04	
C. W. Farmer for pipe and chain	63.11	
Cato's Nursery for 6 Holly, 8 Magnolia	75.20	
Georgia Blue Print Co., for master plan Baconsfeld	6.20	
R. A. Bowen for grading and labor in removing trees in rear of Baconsfeld Club House	894.20	
Commission to Bank at 5% on rentals of \$4,743.15	237.15	
Total Disbursements		<u>1,772.05</u>
Income Balance, May 11, 1954		7,198.39
Income Receipts for period from May 11, 1954 through April 30, 1955		4,743.15
Less Disbursements for the above period		<u>11,941.54</u>
Income Balance as of April 30, 1955		<u>\$10,169.49</u>

[424]

May 17, 1955.

A called meeting of the Board of Managers of Baconsfield was held on Tuesday, May 17, 1955, at 3:30 P. M., in the Directors' room at The First National Bank & Trust Company in Macon. The members in attendance were as follows:

Mr. C. E. Newton, Jr., Chairman
Mrs. Kenneth Dunwody
Mrs. T. J. Stewart
Mr. Herbert Smart
Mr. Frank M. Willingham

Upon motion by Mrs. Kenneth Dunwody, seconded by Mr. Herbert Smart, the reading of the minutes of the meeting held on May 5, 1955, was postponed until the next meeting.

A letter of thanks for use of the Baconsfield Clubhouse by the Highlands Hills Baptist Church, signed by Dr. Milford Hatcher, Chairman of the Board of Deacons, was read to the Board. A letter from Mr. Spain Willingham, requesting that consideration be given to the re-opening of the closed portion of W. G. Lee Boulevard, was brought to the attention of the Board.

A summary was given of the meeting at the City Hall on May 10, 1955, with the Police and Park Committee, at which meeting the petition signed by numerous Macon citizens, requesting the re-opening of the closed portion of Lee Boulevard, was read. Mr. Newton, Mrs. Dunwody, Mrs. Williams, and Mr. Smart attended this meeting.

The Board were advised that Mr. Newton, Mr. Willingham and Mr. Hoffman met with Mayor B. F. Merritt, Chief of Police Ben T. Watkins, Captain Knight, Julius Gholson, Douglas Feagin and William Branan at Baconsfield on May 16th, for the purpose of discussing the re-opening of the driveway and other pertinent [425] facts in connection therewith.

The members of the Board studied the proposed plan for the driveway drawn by Mr. William Branan, City Engineer. Under this plan the driveway would be widened and the curve made more gradual and less dangerous, but it would necessitate cutting down several magnolias and a pecan tree. Counter proposals for other routes were also discussed, as well as the question of whether it should be temporary or permanent. According to our attorney's opinion, the Board of Managers could not be forced to open the road through the park. This was brought to the attention of the members, but they all agreed that they would like to avoid any legal proceedings. It was thought that safety should be the primary consideration in making a decision. After much deliberation, the following decision was reached:

The Board of Managers of Baconsfield will agree to the re-opening of that part of Lee Boulevard which was closed in 1953 on the following conditions:

1. That it be paved with concrete and proper curbing used according to the City Engineer's plan for safe-2-way traffic, only two magnolias to be removed at this time.
2. That the speed on the road be limited to 15 miles per hour.
3. That the City will agree to pave by March 1, 1956, that portion of the proposed driveway off of Lee Boulevard to the Northwest through the group of dogwood trees and up to the unpaved road connecting with Parkview Drive.
4. That during the remainder portion of this present administration the City will agree to pave with concrete the balance of this road to Parkview Drive and if it is found necessary to widen Parkview Drive

from this intersection to Nottingham Drive, that it [426] will be done.

5. That all traffic in any direction through the Park be 2-way traffic and regulated by appropriate signs and patrolled by City police and that no trucks or busses will be allowed through the Park.
6. That the curve in the driveway at the end of the lily pond be redesigned and finished in concrete according to the City Engineer's specifications and upon approval by the Board of Managers of Baconsfield.
7. City Council to approve this over-all plan and agree in writing that it will be carried out at no cost to the Board of Managers of Baconsfield.

It is the unanimous opinion of the members of the Board of Managers of Baconsfield that the Park was set aside by Senator Bacon for the use and enjoyment of the citizens of Bibb County and the main objective of the members of the Board is safety for children and others using the Park. The members of the Board do not condone the use of the driveways through the Park as traffic arteries or thoroughfares.

It was suggested that this be discussed with Mayor Merritt as a tentative agreement, subject to the approval of Mr. A. O. B. Sparks, Attorney for the Board of Managers, and that Mr. Sparks draw up a legal agreement to be signed by the City officials and the Board of Managers of Baconsfield.

The meeting was then adjourned.

C. E. NEWTON JR.

PAULINE H. DUNWODY

C. E. Newton, Jr., Chairman Mrs. Kenneth W. Dunwody,
Secretary

October 14, 1955

A meeting of the Board of Managers of Baconsfield was held on Friday, October 4, 1955, at 3:30 P. M., in the Directors' room of The First National Bank & Trust Company in Macon. The members in attendance were:

Mr. C. E. Newton, Jr., Chairman

Mrs. Frederick W. Williams

Mrs. Kenneth W. Dunwody

Mrs. P. L. Hay

Mr. Frank M. Willingham

Minutes of the two previous meetings held on May 5, 1955, and May 17, 1955, were read and approved.

A statement of cash receipts and disbursements for the period from May 1, 1955, through September 30, 1955, was read and approved and made a part of the minutes.

The Committee discussed helping the Baconsfield Clubhouse Commission to finance the painting of the club house as well as the purchase of blinds and screens. It was thought that it would be to the advantage of the Board of Managers of Baconsfield for the club house to be painted in order to carry out the overall beautification plans for the park. Mrs. Dunwody suggested that the grounds be improved by having some paving done and planting grass and shrubbery. Mrs. Frederick Williams moved that \$1,000.00 be given to the Baconsfield Clubhouse Commission to be used, first, on the outside of the building for painting, blinds and screens. This motion was seconded by Mrs. P. L. Hay and unanimously carried.

Another location for the Federated Garden Club building was discussed, the neighbors having opposed the location at the corner of Nottingham and Curry Drives. It was

stated that the only other location would be where the zoo is located. [428] The Board were advised: That Mayor B. F. Merritt had said he would put the cost of moving the zoo in the City budget for next year; and that Mr. Sidney McNair had raised money to take care of gas connections for the Garden Center, which would be necessary if they build at the zoo location. The Board decided it would be satisfactory to relocate the Federated Garden Club building at the present zoo site, provided the City will move the zoo to Central City Park, with the understanding that the Garden Clubs put in the connections for gas and other facilities.

Entrance gates and a marker for Lee Boulevard were discussed. After some discussion, Mrs. Williams agreed to ask Dr. Lee if a temporary marker similar to those used to mark streets would be satisfactory to him. The marker for Emery Highway was also discussed and Mr. Newton agreed to tell Mr. Jack Smith to put the marker on the right-hand side, leaving it up to Mr. Smith as to the size.

Additional picnic tables for the park were discussed. It was thought that these tables should be the type which have benches on each side and the table in middle. Repairs to the benches already in the park were also agreed upon. At the suggestion of Mr. Frank Willingham, the Board agreed that worn-out benches should be replaced with iron benches. At the request of the Board, Mr. Willingham agreed to attend to this matter. It was suggested that some of the benches be put near the bus stop.

Regarding the grading of the football field and baseball diamond, Mr. Newton stated that he was working on this with Mr. Claude Lewis of the Recreation Department of the City and that prices and other pertinent information would be brought to the attention of the Board.

Mrs. Dunwody suggested that some necessary paving be done near the club house and the balance planted in grass. [429] The ladies agreed to get together in about two weeks to see what could be done about the paving and planting of shrubs. It was suggested that Mr. Frank Willingham take up with Joe Witherington the paving in the back and get Mr. Witherington's views about it.

The meeting was then adjourned.

C. E. NEWTON JR.

PAULINE H. DUNWODY

C. E. Newton, Jr., Chairman Mrs. Kenneth W. Dunwody,
Secretary

[430]

S T A T E M E N T
BOARD OF MANAGERS OF BACONSFIELD
 From May 1, 1955 through September 30, 1955

INCOME RECEIPTS

Rent from Pure Oil Co. 5 months @ \$75.00	\$ 375.00
" " Dairy Queen, 4 months @ \$75.00	300.00
" " Open Air School, 5 months @ \$25.00	125.00
" " Charles Nash, 5 months @ \$225.00	1,125.00
	<hr/>
Total Income Receipts	\$ 1,925.00

DISBURSEMENTS

Boone Realty & Insurance Co. fire insurance premium on Concession Building	23.10
Gift to T. C. James	1,000.00
Commission to Bank at 5% on rentals of \$1,925.00	96.25
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Total Disbursements for period	1,119.35
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	\$ 805.65
Income Balance May 1, 1955	10,169.49
	<hr/>
Income Balance September 30, 1955	\$10,975.14

[431]

April 19, 1956.

A meeting of the Board of Managers of Baconsfield was held on Thursday, April 19, 1956, at 4:00 P. M., in the Director's room of The First National Bank & Trust Company in Macon. The members in attendance were:

Mr. C. E. Newton, Jr., Chairman
Mrs. Frederick W. Williams
Mrs. Kenneth W. Dunwody
Mr. Herbert Smart
Mrs. Frank M. Willingham

Minutes of the meeting held on October 14, 1955, were read and approved.

A statement of cash receipts and disbursements for the period from October 1, 1955, through April 15, 1956, was read and approved and made a part of the minutes.

The subject of the removal of the quonset hut formerly occupied by Mrs. Bowen's fruit stand was discussed. The Board were advised that this hut was purchased by Mr. Sam Hall and he had agreed to remove it; also, that he had been advised that a ground rental of \$35.00 per month would be charged unless the hut was removed not later than May 1, 1956.

The entrance gates for the park were discussed. Mrs. Williams and Mrs. Dunwody stated that they had an appointment to see Mrs. League about plans for these gates on May 7, 1956.

Removal of the zoo was again discussed at length, and the Board were advised that Mayor B. F. Merritt had not, as yet, done anything about this. The Board decided that the elk should be moved to a shady spot. Mrs. Williams and Mr. Willingham were authorized and agreed to make arrangements for this and provide for another pen and a shelter.

[432] The Board discussed permitting the Little League baseball team to put advertising signs on their fence and sell coca colas and sandwiches. Attorney A. O. B. Sparks' opinion in regard to this matter was brought to the attention of the Board. Mr. Sparks stated that in granting this permission, the Board would not be violating the terms of the Will, but it would be a matter of policy with the Board, since there might be other requests of a similar nature. Mrs. Dunwody called attention to the fact that a precedent might be established. She also mentioned that signs were commercial and detracted from the beauty of the park; and that the trash created by coca cola tops and wrappings from sandwiches was undesirable. It was thought by others in the group that this was probably the only way in which the Little League could finance their team. After some discussion, Mrs. Williams moved that the Little League be permitted to continue for one year to put advertising signs on their fence and sell coca colas and sandwiches. This motion was seconded by Mr. Willingham and carried, Mrs. Dunwody voting in the negative.

Mr. Newton explained the plan of the City of Macon to run a sewer line through Baconsfield, stating that he had obtained an opinion from Attorney Sparks to the effect that the City had no right to do this without the consent of the Board of Managers. Mr. Sparks was of the opinion that the Board of Managers should negotiate with the Board of Water Commissioners in an effort to work out some mutually satisfactory arrangement. The Board of Managers were advised that Mr. Emory Matthews, Secretary & Treasurer of the Board of Water Commissioners, is getting plans together and will discuss these with Mr. Newton.

The Board of Managers were also advised that Mr. Newton and Dr. W. G. Lee, Chairman of the Alexander School Board, had discussed the construction of basket

ball and [433] tennis courts at Baconsfield. In view of the fact that the children who attend Alexander III use this playground, it was thought that the Alexander School Board might be interested in financing this construction.

The planting of shrubs and flowers and carrying out of the overall program suggested by Mr. Hoffman was discussed; and the Board agreed that about \$400.00 or \$500.00, or whatever amount might be necessary, should be used in the continuance of this project.

The problem of speedsters in the park was brought up. Mr. Smart agreed to talk with the Chief of Police about having someone in the park during the hours of 7:30 to 9:30 A. M., and from 4:00 to 6:00 P. M., to correct this practice.

Mrs. Kenneth Dunwody tendered her resignation as Secretary of the Board of Managers; which, upon proper motion, was accepted. Mr. Frank Willingham was nominated to succeed Mrs. Dunwody as Secretary, and was unanimously elected.

Mrs. Dunwody called attention to the marker for the "Avenue of Trees", stating that it would probably be finished by the first of May. She suggested that plans be made for the unveiling of this marker as a tribute to Mr. Cleveland James on May 10, 1956, at 4:00 P. M. This suggestion met with the approval of the Board of Managers.

Attention was called to the need for two benches instead of just the one which had been placed near the bus stop. The Board agreed that this should be done.

There being no further business, the meeting was adjourned.

/s/ C. E. NEWTON, JR.

C. E. Newton, Jr., Chairman

/s/ MRS. KENNETH W. DUNWODY

Mrs. Kenneth W. Dunwody, Secretary.

[434]

STATEMENT

BOARD OF MANAGERS OF BACONSFIELD

From October 1, 1955 through April 15, 1956

INCOME RECEIPTS

Rent from Pure Oil Co. 6 months @ \$75.00	\$ 450.00
" " Dairy Queen, 6 months @ \$75.00	450.00
" " Open Air School, 7 months @ \$25.00	175.00
" " Bowen-Balance due Nov. 15, 1955 and part on Dec. 15, 1955, less R/E Comm.	23.75
" " Charles Nash, 7 months @ \$225.00	1,575.00
Total Income Receipts	\$ 2,673.75
Balance as of October 1, 1955	10,975.14
	<hr/> \$13,648.89

DISBURSEMENTS

Baconsfeld Clubhouse Commission	1,000.00
Karsten & Denson—fertilizer and rye grass	160.50
Macon Electric & Blueprint Co.	2.50
John Hoffman Associates in re advice and preparation of plan for paving area on side and rear Clubhouse	50.00
Central Sash & Door Co. lumber for benches	63.00
Coley's Nursery—6 Hollies and 20 Japonica	133.50
Frank Green for fertilizer	7.00
Karsten & Denson—fertilizer and peat moss	24.52
W. S. Goldwire for painting benches	200.00
Dr. Lee for pink dogwood trees	60.00
Sam Hall & Sons for paving, brick walk and repairs to Woman's Club	3,392.10
Conditioned Air, Inc. for removing tower and pump and reinstall after grading, Woman's Clubhouse	93.75
Ingleside Nurseries—6 water oaks and 1 tulip poplar	69.53
C. W. Farmer Co. pipe and well chain	145.01
Hall & Sons planting grass, grading	300.00
Commission to Bank @ 5% of rentals	133.69
Total Disbursements	<hr/> 5,835.10
Balance as of April 15, 1956	\$ 7,813.79

[443]

May 8, 1958

A meeting of the Board of Managers of Baconsfield was held on Thursday, May 8, 1958, at 3:30 P. M., in the Directors' room of The First National Bank & Trust Company in Macon. Members in attendance were:

Mr. C. E. Newton, Jr., Chairman
Mrs. Kenneth W. Dunwody
Mrs. P. L. Hay
Mrs. Frederick Williams
Mrs. T. J. Stewart
Mr. Frank M. Willingham

Due to illness, Mr. Herbert Smart could not attend.

Minutes of the meeting held on September 13, 1957, were read and approved.

A statement of cash receipts and disbursements for the period from April 1, 1957, through March 31, 1958, was read. A motion by Mr. Frank M. Willingham, seconded by Mrs. Frederick Williams, that this statement be approved, was unanimously carried.

The Board considered the purchase of fill dirt to fill in the area back of the former site of Mrs. Bowen's fruit stand and the Happy Hour Club. Mr. C. E. Newton, Jr., stated that this dirt could be purchased from Logan Lewis at 50¢ per load, or a total cost of approximately \$5,000.00, including cost of delivery. Mr. Frank Willingham moved that Mr. Newton be given authority to act and close the deal for this purchase at these figures. The Board was also advised that it would cost approximately \$1,500.00 to place a 30-inch concrete drain sewer from the site of the Dairy Queen building to the property line so that this area could be filled. The motion was seconded by Mrs. Frederick Williams and unanimously carried.

[444] Definite dates for holding the semi-annual meetings of the Board of Managers were discussed. It was unanimously agreed that these meetings be held on the last Thursday in April and October, each year.

After a lengthy discussion as to further development of the overall plan prepared by Mr. Hoffman, it was suggested that the ladies on the Board contact Mr. Frank Willingham in regard to the construction of suitable walks in front of the club house and that the planting of bulbs, shrubs and flowers be continued.

The present marker to Senator A. O. Bacon, which is now located in the zoo area, has a mistake in the lettering; and an estimate of the expense of correcting this mistake and moving the monument to another location was discussed and prices for this work are to be secured. Members of the Board are to be notified and a suitable site selected by Mrs. Frederick Williams and the other lady members of the Board.

The removal of the zoo to another location in the park or to Central City Park was discussed. Mrs. Kenneth Dunwody moved "that the Board propose to Mayor B. F. Merritt that in lieu of cutting the driveway from Lee Boulevard to the road near the picnic area, which he promised to do, that he move the zoo; and the Board Managers would appropriate up to \$1,500.00 for the purpose of helping defray the expenses of this removal." This motion was seconded and unanimously carried.

Mrs. T. J. Stewart suggested that trash cans be placed near the benches at the bus stop on North Avenue. It was also suggested that shrubbery be planted to conceal the trash cans back of Baconsfield Clubhouse.

[446]

STATEMENT
BOARD OF MANAGERS OF BACONSFIELD
 From April 1, 1957 through March 31, 1958

INCOME RECEIPTS

Rent from Pure Oil Co., 12 months @ \$75.00	\$ 900.00
" " Dairy Queen, 12 months @ \$75.00	900.00
" " Happy Hour Club, 12 months @ \$25.00	300.00
" " Charles Nash, 12 months @ \$225.00	2,700.00
	<hr/>
	4,800.00
From Board of Water Commissioners for sewer easement	3,500.00
	<hr/>
	8,300.00
Income Balance as of April 1, 1957	4,962.77
	<hr/>
	\$13,262.77

DISBURSEMENTS

Luther William's Son, insurance to 5-28-58 on 125 Emery Highway	26.28
Purchase of narcissus bulbs	26.20
T. C. James for Christmas tree for Clubhouse	15.00
George W. Bass, decorating and dismantling Christmas Tree	10.00
C. W. Farmer for Christmas tree wire and lights	63.99
Baconsfeld Clubhouse for electric current for Christmas tree	14.47
Central Georgia Fertilizer Co. for fertilizer	116.00
Commission to bank @ 5% on rentals of \$4800.00	240.00
	<hr/>
Total Disbursements	511.94
	<hr/>
Balance as of March 31, 1958	\$12,750.83

[450]

May 8, 1959.

A meeting of the Board of Managers of Baconsfield was held on Friday, May 8, 1959, at 4:00 P. M., in the Directors' room of The First National Bank & Trust Company in Macon. Members in attendance were:

Mr. C. E. Newton, Jr., Chairman
Mrs. Kenneth W. Dunwody
Mrs. Frederick W. Williams
Mrs. T. J. Stewart
Mrs. P. L. Hay
Mr. Frank M. Willingham, Secretary.

Minutes of the meeting held on October 28, 1958, were read and approved.

Mrs. Williams nominated Mr. George Rankin as a member of the Board to fill vacancy created by the resignation of Mr. Herbert Smart. This nomination was seconded by Mr. Willingham; Mr. Rankin was unanimously elected and attended this meeting.

A statement of cash receipts and disbursements for the period from April 1, 1958, through March 31, 1959, was read and discussed. Upon motion by Mr. Willingham, seconded by Mrs. Hay, this statement was unanimously approved.

A letter from the Baconsfield Clubhouse Commission, setting out the necessity for putting a new proof on the club house, was read to the Board. After some discussion, Mrs. Dunwody moved that \$1,000.00 be given to the Baconsfield Clubhouse Commission for the purpose of helping to install a new roof, with the hope that the club house would also be painted in the near future. This motion was seconded by Mr. George Rankin and unanimously carried.

The Board were advised that Mr. Cleve James would
[451] like to have about 10 links of 50-foot hose, together

with sprinklers, in order that the shrubs and flowers might be kept watered. The group agreed to the purchase of these items, as well as about \$225.00 worth of top soil.

The location of the former wading pool was discussed and Mr. Rankin agreed to look into the possibility of again using its as a wading pool; or, if this seemed impractical, converting it into playground or parking area.

As information, to the Board, they were advised that \$1,084.93 had been transferred from the old swimming pool account to the regular account of the Board of Managers of Baconsfield. They were also informed that \$4,500.00 had been spent for dirt filling in the area between swimming pool and Spring Street and back of the building occupied by the Happy Hour Club.

The Board again agreed to permit the Little League players to post signs on the fence around the baseball diamond for another year during the baseball season. It was also suggested that another Little League field be put in Baconsfield, if needed; and Mr. Willingham agreed to be on the lookout for this.

A cash gift to Mr. Cleve James for his work in putting in the watering system was considered. A motion by Mr. Willingham that \$500.00 be given to Mr. James was seconded by Mrs. Hay and unanimously carried.

Mrs. Williams moved that Mrs. Dunwody be given at least \$500.00 to be used for the beautification of the park, planting additional shrubbery and flowers. This motion was unanimously carried.

The meeting was then adjourned.

/s/ C. E. NEWTON, JR.

C. E. Newton, Jr., Chairman.

/s/ FRANK M. WILLINGHAM

Frank M. Willingham, Secretary.

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STATEMENT

BOARD OF MANAGERS OF BACONSFIELD

From April 1, 1958 through March 31, 1959

INCOME RECEIPTS

Rent from Pure Oil Co., 12 months @ \$75.00	\$	900.00
“ “ Dairy Queen, 12 months @ \$75.00		900.00
“ “ Happy Hour Club, 12 months @ \$25.00		300.00
“ “ Charles Nash, 12 months @ \$225.00		2,700.00
		<hr/> 4,800.00
Sale of Stumpage to L. F. Griffin		293.70
		<hr/> \$5,093.70
Balance as of April 1, 1958		12,750.83
		<hr/> \$17,844.53

INCOME DISBURSEMENTS

Total Income Disbursements (see itemized list)	\$10,513.49	
Commission @ 5% on rents of \$4,800.00	240.00	10,753.49
	<hr/>	<hr/>
Income Balance as of March 31, 1959		\$ 7,091.04

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STATEMENT

BOARD OF MANAGERS OF BACONSFIELD

From April 1, 1959 through March 31, 1959—List of Disbursements

Luther Williams Son, insurance on 125 Emery Highway	\$ 26.28
R. A. Bowen, furnishing and installing concrete pipe at Happy Hour Club	900.00
Central Sash & Door Co. for 3 joggling boards	154.50
Jones, Sparks, Benton & Cork fee for service re Board of Water Commissioners for Sewer Line Lease	150.00
Frank B. West survey south of Emery Highway and North Avenue	250.00
C. C. Matthews for damage to garden	10.00
Mrs. Kenneth Dunwoody for bulbs	50.17
Mrs. N. Logan Lewis for purchase of dirt	5,400.00
Adams-Feagin Hardware Co. for footballs and basketballs	48.11
T. C. James for bulbs and express	38.22
T. C. James for Christmas Tree	15.00
C. W. Farmer for Christmas Tree lights	57.13
George W. Bass for decorating tree	10.00
G. A. Spence for decorating tree	5.00
Baconsfeld Clubhouse for electric bill for lighting tree	14.47
Lowe Electric Co. for lamps	20.61
Sam Hall & Sons for asphalt walk	1,300.00
Central Georgia Fertilizer Co.	240.00
Mathis-Akins Concrete Block Co.	78.00
Mrs. T. C. James, payroll, 2-20-59	178.00
Mrs. T. C. James, payroll	60.00
Mrs. T. C. James payment on contract T. C. Huckabee for part labor on installing water system	167.50
Mrs. T. C. James labor on sprinkler system	300.41
Marbut Co. for material and pipe for sprinkler system	632.09
Phillip Garden Mars for shrubbery	407.70
Total Disbursements	<u>\$10,513.49</u>

[474]

July 24, 1962

A call meeting of the Board of Managers of Baconsfield was held in the Directors' Room of The First National Bank and Trust Company in Macon at 11:00 A. M. on July 24th, 1962, with Mrs. P. L. Hay, Mrs. Kenneth Dunwody, Mr. George Rankin, Mr. Frank Willingham and Mr. C. E. Newton, Jr. attending. Mrs. Frederick Williams was out of the City and was, therefore, unable to attend.

After a call to order by the Chairman and the reading and approval of the minutes of the meeting held May 21st, 1962, Mr. Newton told the Board that since he was Chairman of the Board of Managers of Baconsfield and, also, Chairman of the Board of the Bank, he would like to be excused from the meeting and turn the next item of business over to Mr. George Rankin for handling.

At this point, Mr. Rankin took charge, advising the Board that The First National Bank & Trust Company in Macon would like to negotiate a ground lease of space in Baconsfield for a five year period, with an option for an additional five years. A map was consulted, showing the exact location of the proposed rental area and a letter from Mr. Thomas H. Hall, III, M. A. I., was submitted to the Board stating that Mr. Hall considered \$150.00 per month as the fair market net rental for the property.

After a brief discussion and upon motion by Mrs. Kenneth Dunwody, seconded by Mrs. P. L. Hay, the following resolution was unanimously adopted:

"RESOLVED, That the Board approve a ground rental of space in Baconsfield fronting on Emery Highway approximately 200 feet, and between the Western line of the ground leased to the Dairy Queen store and the Eastern line of the ground leased to Wofford Oil Company, and going back in a Southerly direction [475] approximately 120 feet, to The First National Bank and Trust Company

in Macon for a period of five years, with an option to The First National Bank and Trust Company in Macon for an additional five years for a ground rental of \$150.00 per month, the said The First National Bank & Trust Company in Macon to have the right to remove from the premises any and all buildings and improvements erected by them at the termination of the lease.

"Be it further resolved that Mr. George Rankin, a member of the Board, and Mr. Frank Willingham, Secretary of the Board, be hereby authorized to sign the lease on behalf of the Board of Managers of Baconsfield."

Mr. Newton was then recalled to the meeting and a discussion was held regarding the lighting of the tennis courts in the park. It was brought out that one court is now lighted, while two are not. The Board Members generally agreed that not only should lighting of a modern design be installed on the unlighted courts, but that the old lights should probably be replaced with new ones. Mr. Newton told the Board he felt that the City would probably do the work if the Board would furnish the materials and promised to contact Mr. Spence of the City about doing the work and, also, about the best lights to use. He is to advise the Board of the approximate cost and get their verbal approval by telephone before the work is done.

There being no further business, the meeting adjourned.

/s/ GEORGE P. RANKIN

George P. Rankin, Acting Chairman

/s/ FRANK M. WILLINGHAM

Frank M. Willingham, Secretary

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STATEMENT

BOARD OF MANAGERS OF BACONSFIELD

From October 1, 1961 through September 30, 1962

INCOME RECEIPTS

Rent from Pure Oil Co. 12 months @ \$75.00	\$ 900.00
Rent from Dairy Queen 12 months @ \$116.67 plus additional due on 1961	1,583.41
Rent from Happy Hour Club 11 months @ \$25.00	275.00
Rent from Chas. E. Nash 12 months @ \$225.00	2,700.00
	<hr/> 5,458.41
Balance as of September 30, 1961	10,907.79
	<hr/> 16,366.20

INCOME DISBURSEMENTS

10-26-61	Minton Farm Supply for rye grass and cotton seed meal	\$ 134.75
11-1-61	Mrs. Kenneth W. Dunwody for 200 Hemerocallis	70.00
11-2-61	W. T. Wacter for 35 loads of sandy top soil	157.50
	Mrs. T. C. James for 2 packages of Garden bulbs	49.97
12-15-61	Mrs. T. C. James for Christmas Tree at Baconsfield	25.00
12-20-61	Bob Jones for decorating tree	7.50
	Terry Hitchcock for decorating tree	7.50
	E. R. Spence for decorating tree	7.00
	Fred Stanton labor replacing lights in wires for stringing Christmas Tree	5.00
	C. E. Newton, Jr. for Moravian Star and light bulb for top of Christmas Tree	3.30

Disbursements (Cont'd.)

1-5-62	Hennis Freight Lines, Inc. for freight on six picnic tables	41.58	
1-16-62	Norway Manufacturing Co. for six picnic tables	212.40	
1-23-62	Peeler Hardware Co. Lights for Christmas Tree in front of Clubhouse	8.38	
2-19-62	Central Ga. Fertilizer Co. for Azalea special fertilizer	400.00	
3-19-62	Macon Blueprint Co. for two copies of Baconsfield Pool Map	1.24	
4-6-62	Luther Williams Son for premium on 137 Emery Highway	27.90	
5-21-62	Gift to Mr. T. C. James as voted by the Board	500.00	
7-17-62	Mrs. Kenneth W. Dunwody for purchase of tulip and daffodil bulbs	55.50	
9-25-62	Mrs. Kenneth W. Dunwody for purchase of narcissus bulbs from Miss Willie Rice	50.00	
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9-27-62	Macon Feed & Seed Co. for 600 lbs. Rye Grass	44.70	
	Central Cotton Oil Co. for 3,000 lbs. of Cotton Seed Meal	93.75	
		<hr/>	
		1,902.97	
	Commission @ 5% on rents of \$5,458.41	272.92	
		<hr/>	
			2,175.89
			<hr/>
	Income Balance as of September 30, 1962		14,190.31

[482]

April 9, 1963

A meeting of the Board of Managers of Baconsfield was held in the Directors' Room of The First National Bank & Trust Company in Macon at 3:30 P. M. on April 9th, 1963, with all members present.

The Chairman, Mr. C. E. Newton, Jr., began the meeting by welcoming the new member of the Board, Mrs. Francis K. Hall, and expressing the Board's thanks to Mr. Gus Sparks, Jr., Attorney for the Board, for his presence. Mr. Newton also commented on the beauty in Baconsfield during the Spring season and all members concurred that many favorable comments had been received. The tulip beds drew the most praise and some thought was given to further plantings in the triangle at Nottingham Drive and Dr. W. G. Lee Parkway.

Minutes of the meeting held November 9, 1962, were read and approved.

A statement of cash receipts and disbursements for the period from April 1st, 1962, through March 31, 1963, was presented to each member of the Board and approved to become a part of the minutes. Mrs. Kenneth Dunwody made a motion that \$10,000.00 of the sum now held on open account be transferred to a savings account so that some interest could be earned. On a second by Mr. Willingham, the motion was unanimously carried.

Mr. Newton reported that he had been in contact with Mr. Thomas H. Hall, III, regarding the appraisal of highway rights-of-way through Baconsfield and Mr. Hall had estimated the cost for such an appraisal would run between \$1,700 and \$2,500. The Board gave its approval for this expenditure. Also, they ratified the \$500.00 gift to the Ocmulgee Little League, the members having given their personal approval of this gift when contacted in March. For the information of the Board, letters of thanks

for this gift were read—one from Dr. John Paul Jones [483] and the other from Dr. Henry H. Tift.

Action on a request from Drs. Jones and Tift for permission to install light poles around the ball diamond so that Little League teams could play at night was postponed until a later meeting.

Mr. Newton then called upon Mr. Gus Sparks, Jr. to present to the Board his law firm's recommended course of action concerning the recent attempt by negro groups to integrate Baconsfield. Mr. Sparks discussed his interpretation of the A. O. Bacon Will and cited points of law involved, as well as court decisions that had been made in similar cases.

After thorough discussion and consideration, the following three resolutions were offered by Mrs. Kenneth Dunwody, seconded by Mrs. Francis K. Hall, and unanimously adopted by the Board, subject to such revision or word change as the firm of Jones, Sparks, Benton & Cork deems advisable and best:

#1. "RESOLVED, that the City of Macon (formerly known as The Mayor and Council of the City of Macon) as Trustee of the Trust established under the Last Will and Testament of A. O. Bacon, deceased, covering property situate in the County of Bibb and City of Macon and known as 'Baconsfield' be requested to resign as such Trustee and to convey all such property, both real and personal which it now holds in such capacity unto the Trustees who shall be appointed by the Judges of the Superior Courts, Macon Circuit, upon proper application by the Board of Managers of Baconsfield; and, in event of a refusal by the City of Macon to comply with said request that Messrs. Jones, Sparks, Benton & Cork, counsel for the Board, be and they are hereby authorized to

take such action as they may deem appropriate to effect such removal.

#2. "RESOLVED, that the new Trustees to be appointed as aforesaid by the Judges of the Superior Courts, Macon Circuit, [484] be three (3) in Number, to-wit, Dr. Henry H. Tift, Emmett G. McKenzie, Jr. and Lawton Miller.

#3. "RESOLVED, that such attorneys be authorized and they are hereby directed to cancel the contract by and between the Board of Managers of Baconsfield and the City of Macon, under which the latter operates that facility known as 'Baconsfield Pool', and that a new contract be negotiated by the Board for the operation of said facility by private parties, either individually or in a partnership or corporate capacity."

There being no further business, the meeting adjourned.

/s/ C. E. NEWTON, JR.

C. E. Newton, Jr., Chairman

/s/ FRANK M. WILLINGHAM

Frank M. Willingham, Secretary

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STATEMENT
BOARD OF MANAGERS OF BACONSFIELD
From April 1, 1962 through March 31, 1963

INCOME RECEIPTS

Rent from Pure Oil Co. 12 months @ \$75.00	\$ 900.00
Rent from Dairy Queen 12 months @ \$116.67 plus additional due on 1961	1,679.93
Rent from Happy Hour Club 12 months @ \$25.00	300.00
Rent from Chas E. Nash 12 months @ \$225.00	2,700.00
	<hr/> 5,579.93
Balance as of March 31, 1962	12,094.17
	<hr/> 17,674.10

INCOME DISBURSEMENTS

4-6-62	Luther Williams Son for pre- mium on 137 Emery Highway	\$ 27.90
5-21-62	Gift to Mr. T. C. James as voted by the Board	500.00
7-17-62	Mrs. Kenneth W. Dunwody for purchase of tulip and daffodil bulbs	55.50
9-25-62	Mrs. Kenneth W. Dunwody for purchase of narcissus bulbs from Miss Willie Rice	50.00
9-27-62	Macon Feed & Seed Co. for 600 lbs. rye grass	44.70
	Central Cotton Oil Co. for 3,000 lbs. cotton seed meal	93.75
10-2-62	Evelyn Yater Flower Shop for arrangement sent to home of Mrs. P. L. Hay, Sr.	12.36
10-5-62	W. T. Wacter for 40 loads of dirt	180.00
11-13-62	Benton Rapid Express—express charges from N. Y. to Macon on bulbs from Holland	11.91

11-23-62	Karl Schroff & Associates—Duty and freight on bulbs from Holland to N. Y.	19.71
11-27-62	T. C. James for Christmas Tree	30.00
12-5-62	Oxley-Wynn Co. for Christmas Tree Lights	10.72
12-11-62	G. A. Spence for decorating tree	7.50
	Wm. R. Jones for decorating tree	7.50
	Terry Hitchcock for decorating tree	7.50
2-8-63	Central Ga. Fertilizer Co.—fertilizer	480.00
3-5-63	Ocmulgee Little League—contribution authorized by Board Members	500.00
		<hr/>
	Commission @ 5% on rents of \$5,579.93	\$2,039.05
		279.00
		<hr/>
		2,318.05
	Income Balance as of March 31, 1963	<hr/>
		\$15,356.05

February 4, 1964

A call meeting of the Board of Managers of Baconsfield was held in the Directors' Room of The First National Bank and Trust Company in Macon at 11:00 A. M. on February 4, 1964, with Mr. C. E. Newton, Jr., Mr. George P. Rankin. Mrs. Francis K. Hall, Mrs. T. J. Stewart and Mrs. Frederick Williams present. Mr. Frank M. Willingham and Mrs. Kenneth W. Dunwody could not attend. Mr. A. O. B. Sparks, Jr., attended as attorney for the Board.

The Chairman, Mr. C. E. Newton, Jr., called the meeting to order and asked for the reading of the minutes of the meeting held October 29th, 1963. These minutes were approved.

Since this was a call meeting no formal statement of cash receipts and disbursements was presented, but the members were advised of the cash balances on hand.

The highway right-of-way through Baconsfield Park and the Highway Board's offer for that right-of-way was then discussed, together with the appraisal of the land submitted by Mr. Thomas H. Hall, III: Upon motion by Mr. Rankin, seconded by Mrs. Williams, the Highway Board's offer of \$131,000 was unanimously accepted.

At the Chairman's request, Mr. A. O. B. Sparks, Jr. brought the Board up-to-date on what is being done to see that Baconsfield is operated according to the terms of Senator A. O. Bacon's Will, advising them the City of Macon had agreed to resign as Trustee because of its inability to continue to carry out the terms of the trust and further advising that he, on behalf of the Board, would petition the Court for the appointment of individual trustees.

A general discussion followed in which Mr. Sparks answered questions concerning the status of the court proceedings instituted on behalf of the Board.

[489] There being no further business, the meeting adjourned.

/s/ C. E. NEWTON, JR.
C. E. Newton, Jr., Chairman

/s/ MARY D. KEARNES
Mrs. Mary D. Kearnes,
Acting Secretary

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BOARD OF MANAGERS OF BACONSFIELD

February 3, 1964

Balance in Checking Account	\$ 2,548.35
Balance in Savings Account	15,248.93
Total	17,797.28

Expenditures since meeting of 10/29/63:

Thomas H. Hall, III—Appraisal of a partial taking Baconsfeld by State Highway Department	1,750.00
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[495]

May 21, 1964.

A call meeting, for the purpose of reorganization, of the Board of Managers of Baconsfield was held in the Directors' Room of The First National Bank and Trust Company in Macon at 3:00 P. M. on May 21st, 1964, with Mr. C. E. Newton, Jr., retiring Chairman of the Board, presiding. Other members present were Mrs. Francis K. Hall, Mrs. R. A. McCord, Jr., Mrs. Dan O'Callaghan, Mrs. W. E. Pendleton, Mr. Frank M. Willingham and Mr. A. M. Anderson. Mr. George P. Rankin could not attend due to his absence from the City. Mr. Willis Sparks, III, attended representing the attorneys for the Board.

Mr. Newton called the meeting to order, welcomed the new Board members, and expressed appreciation to Mr. Willingham, Mr. Rankin and Mrs. Hall for continuing their service on the Board.

Minutes of the meeting held April 10th were read and approved, and upon the request of Mr. Newton, Mr. Sparks brought the Board up-to-date on the status of the recent court proceedings, explaining why it was necessary to substitute the names of the new Board for those of the old Board in the Court Petition, and securing the signatures of the members present.

For the benefit of the new members, the statement of receipts and disbursements presented at the April 10th meeting and covering the period from April 1, 1963 through March 31, 1964, was again presented.

Letters of acknowledgment and appreciation were read from Mr. and Mr. T. C. James, from Mr. Harrold L. Kitchens of the Ocmulgee Little League, Mr. Sam Lamback of the Macon Tennis Club and Mrs. George Martin of the Alexander III P.T.A.

Mr. Sparks then explained to the Board various provisions of the present lease between the Board of Managers

and the City of Macon for the operation of the Pool and read to the members [496] a letter his firm had forwarded, under date of May 19, 1964, to the Mayor of the City of Macon advising the City of its breach of the lease under Covenant No. 2, thereof, and pointing out that the letter would serve as a five day notice "within the meaning of the final paragraph of said lease."

Rotation of membership on the Board was discussed and upon motion by Mrs. Hall, seconded by Mr. Willingham, the following rotation plan was adopted:

- (1) The present Board shall serve for a term of five years.
- (2) At the expiration of five years one lady and one man shall be replaced, these two being Mrs. Francis Hall and Mr. George P. Rankin.
- (3) Each two-year period thereafter two present members are to be replaced until the full Board is rotated.
 - (a) First two-year rotation shall be Mr. Frank Willingham and Mrs. R. A. McCord, Jr.
 - (b) Second two-year rotation shall be Mr. A. M. Anderson and Mrs. Dan O'Callaghan.
 - (c) Third two-year rotation shall be Mrs. W. E. Pendleton.
- (4) Persons who have previously served on the Board can be re-elected after an absence from the Board of two years.

The Board referred the matter of a new Agency contract with The First National Bank & Trust Company in Macon to the Board attorneys for approval, and a copy

of the contract is to be submitted to each member before final action.

Upon call for nominations for a new Chairman to serve the Board, Mrs. Hall's nomination of Mr. Frank M. Willingham was seconded by Mrs. McCord and Mr. Willingham was unanimously elected.

Mrs. R. A. Kearnes was elected Secretary to the Board and was also elected to serve as Treasurer until such time as a new Agency contract could be signed with The First National Bank.

[497] Following a discussion of the best methods to maintain the grounds of Baconsfield until a maintenance contract could be negotiated, the meeting adjourned.

/s/ FRANK M. WILLINGHAM
Frank M. Willingham, Chairman

/s/ MRS. R. A. KEARNES
Mrs. R. A. Kearnes, Secretary

(498)

STATEMENT OF ACCOUNTS

BOARD OF MANAGERS OF BACONSFIELD

From April 1, 1964 thru Sept. 30, 1964

CHECKING ACCOUNT

RECEIPTS

Rents:			
Rent from Dairy Queen—6 months @ \$116.67	\$	700.02	
Rent from Happy Hour Club—6 mos. @ \$25.00		150.00	
Rent from Chas. E. Nash—6 mos. @ \$225.00		<u>1,350.00</u>	
Total Rent Receipts			\$ 2,200.02
Other:			
6-16-64 Transferred from Savings Account		2,000.00	
8-26-64 Transferred from Savings Account		700.00	
9-14-64 Transferred from Savings Account		1,000.00	
9-24-64 Proceeds from maturity of \$132M U. S. Treas. Bills due 9/24/64		<u>132,000.00</u>	
			135,700.00
Balance in Checking Account 3/31/64			<u>3,825.78</u>
			\$141,725.80

DISBURSEMENTS

4-7-64 Deposit to Savings Account in First Natl.	3,000.00	
4-9-64 Macon Blueprint Co.—copies of Ga. Power Easement	18.12	
4-13-64 T. C. James—Gift	500.00	
5-8-64 Luther Williams' Son—Policy #FF46-25-26 5M—157 Emery Highway	27.90	
6-16-64 Jones, Sparks, Benton & Cork—Legal Fees re: Highway Right-of-Way Condemnation Suit	2,000.00	
6-17-64 Thomas H. Hall, III, MAI—Appraisal of Ga. Power Easement thru Baconsfield	40.00	
7-27-64 Cumbe Brothers—Work in Baconsfield thru 7-22-64	1,691.71	
8-28-64 Cumbe Brothers—Work in Baconsfield thru 7-31-64	973.28	
9-14-64 Cumbe Brothers—Work in Baconsfield thru 8-31-64	1,319.08	
9-24-64 The First National Bank & Trust Co. in Macon for Purchase of \$136,000 U. S. Treasury Bills due 7-31-65	<u>131,678.60</u>	
		\$141,248.69
		477.11
Less: Comm. @ 5% on rents of \$2,200.02		<u>110.00</u>
Balance in Checking Account 9-30-64		\$ 367.11

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STATEMENT OF ACCOUNTS
BOARD OF MANAGERS OF BACONSFIELD
From April 1, 1964 thru Sept. 30, 1964

SAVINGS ACCOUNT:

Savings Balance 3-31-64	\$15,248.93	
Transferred to Savings from Check- ing Account for Investment on 4-7-64	3,000.00	
Interest 6-1-64	284.34	
	<hr/>	
		\$ 18,533.27
Less: Transfers to checking account to defray expenses:		
6-16-64	2,000.00	
8-26-64	700.00	
9-14-64	1,000.00	
	<hr/>	
Total Withdrawals		3,700.00
Savings Balance 9-30-64		<hr/> \$ 14,833.27

RECAP

Other Investments:

\$136M U. S. Treasury Bills due 7-31-64 (3.60 basis)	\$131,678.60
Balance in Checking Account 9-30-64	367.11
Balance in Savings Account 9-30-64	14,833.27
	<hr/>
Total Cash and Investments 9-30-64	<hr/> \$146,878.98 <hr/>

STATEMENT OF ACCOUNTS
BOARD OF MANAGERS OF BACONSFIELD

RIGHT-OF-WAY FUND

Received from Sale of Right-of-Way	\$ 132,000.00
Balance of \$132,000.00 U. S. Treasury Bills due 9-24-64	-129,591.66
	<u>2,408.34</u>
Proceeds from maturity of U. S. Treasury Bills due 9-24-64	+132,000.00
	<u>134,408.34</u>
Balance of \$136,000.00 U. S. Treasury Bills due 7-31-65	-131,678.60
	<u>2,729.74</u>
Attorney's Fees in connection with Condemnation Suit on Right-of-Way	\$2,000.00
Appraisal Fee to Thomas H. Hall, III, MAI, on Right-of-Way	<u>1,750.00</u>
	<u>-3,750.00</u>
Fund's Equity in Fund now invested in Treasury Bills as of 9-30-64	<u>1,020.26</u>

RECAP

Fund's Equity in Right-of-Way Fund	\$ 1,020.26
Balance in Checking Account 9-30-64	367.11
Balance in Savings Account 9-30-64	<u>14,833.27</u>
Cash and Investments Available to Board 9-30-64	<u><u>\$ 16,220.64</u></u>

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February 1, 1966

A joint call meeting of the Board of Managers of Baconsfield and the individual Trustees was held in the Directors' Room of The First National Bank and Trust Company in Macon at 3:00 P. M. on February 1, 1966.

All three Trustees were present together with all Board members except Mrs. W. E. Pendleton, Jr. who could not attend.

Mr. Frank Willingham, Chairman of the Board, was unable to join the meeting until around 3:30 P. M. and until his arrival Mr. Lawton Miller, representing the Trustees, and Mr. A. M. Anderson, representing the Board of Managers, presided jointly.

After an open discussion by the group concerning the course the Trustees and the Board should follow in the light of the recent Supreme Court decision concerning Baconsfield, the following resolution was unanimously adopted:

"BE IT RESOLVED: That the Trustees and the Board of Managers pursue to every reasonable extent the responsibility of operating Baconsfield according to the terms of the Trust established under the Will of Senator A. O. Bacon; and, That if and when it becomes legally impossible to carry out the terms of the Trust, the property should revert to the heirs."

Also, upon motion by Mr. Lawton Miller, seconded by Mr. B. L. Register, the group unanimously voted to ask the Board's attorneys to secure an amendment to the Order of the Superior Court of Bibb County concerning the funds received from the Highway Condemnation proceedings so that the interest earned on these funds can be used by the Board for current expenses.

There being no further business, the meeting adjourned.

/s/ MRS. R. A. KEARNES, Secretary

/s/ FRANK M. WILLINGHAM, Chairman